

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE)	NG 00-_____
APPLICATION OF KINDER MORGAN,)	
INC., KM RETAIL UTILITIES)	
HOLDCO LLC, AND)	
SOURCE GAS DISTRIBUTION LLC)	
FOR APPROVAL OF ASSET)	
TRANSFER OF JURISDICTIONAL)	
UTILITY ASSETS)	

I. INTRODUCTION

A. Summary of Transaction

Kinder Morgan, Inc. ("Kinder Morgan"), KM Retail Utilities Holdco LLC ("KM Retail Holdco"), and Source Gas Distribution LLC ("Source Gas Distribution")¹ hereby make this application to the Nebraska Public Service Commission (the "Commission") pursuant to Sections 66-1821 and 66-1828 and other applicable provisions of the State Natural Gas Regulation Act (the "Act"), for approval of the proposed transfer of the Nebraska jurisdictional utility assets of Kinder Morgan, Inc. to Source Gas Distribution (the "Asset Transfer"). The jurisdictional utility assets of Kinder Morgan's distribution utilities in Wyoming and Colorado also will be transferred to Source Gas Distribution in connection with the Asset Transfer. Source Gas Distribution is a limited liability company established under Delaware law. All membership interests in Source Gas Distribution are owned by KM Retail Holdco, and would continue to be so owned after the Asset Transfer. KM Retail Holdco in turn is a wholly-owned subsidiary of Kinder Morgan. After the Asset Transfer, Source Gas Distribution would become the "jurisdictional utility" under the Act in Nebraska, replacing Kinder Morgan, and it is therefore requested that the Commission

¹ Source Gas Distribution LLC was formed as "KM Retail, LLC" in order to transfer all of Kinder Morgan's retail natural gas distribution assets to a separate and distinct entity. The name of KM Retail LLC was recently changed to Source Gas Distribution LLC in anticipation of its pending sale.

grant such authority as is required for transfers of franchises and certificates under Section 66-1821 ("CPCNS").

Kinder Morgan proposes to consummate the Asset Transfer in connection with a merger agreement, dated August 28, 2006, pursuant to which Kinder Morgan would become a privately-owned company (the "Buy-Out Transaction"). To the extent that the Commission deems the Buy-Out Transaction a "reorganization or change of control" pursuant to Neb. Rev. Stat. § 66-1828, Applicants likewise seek the Commission's approval of the Buy-Out Transaction through this Application.

Separate and distinct from the Buy-Out Transaction, Kinder Morgan has entered into an agreement to sell its utility businesses to entities indirectly owned by General Electric Corporation (GE). That transfer of the ownership of Kinder Morgan's public utility business within the State of Nebraska is the subject of a separate application before the Commission for authorization and approval. That application, which was filed with the Commission on September 29, 2006, similarly requests approval for an internal transfer of the public utility assets, including CPCNS, of Kinder Morgan, Inc. to Kinder Morgan's subsidiary, Source Gas Distribution as a first step, and then further requests authority as a second step for the ownership of Source Gas Distribution to be transferred to an entity indirectly owned by GE. The description of Kinder Morgan's assets being transferred to Source Gas Distribution are set out in the attachments to that application and are incorporated herein and made a part hereof by reference.

While both transactions are expected to occur, the timing and closing of each transaction are unknown and uncertain at this point. Therefore, regulatory approval is being requested for

both transactions from each state commission (Colorado, Nebraska, and Wyoming) as well as from other governmental authorities. If the GE acquisition were to receive all necessary approvals and all conditions were met such that its closing were to occur first, then Commission approval of this Application, if not already obtained, would become unnecessary. On the other hand, if the Buy-Out Transaction were to receive all necessary approvals and all conditions were met such that its closing were to occur first, the first step of transferring Kinder Morgan's gas distribution assets to a subsidiary would have been approved, and the Commission would then need only proceed to approve the GE acquisition of that subsidiary, Source Gas Distribution.

Presently, all of Kinder Morgan's retail natural gas distribution assets are owned by Kinder Morgan, Inc. and operated within a division of the company known as "Kinder Morgan Retail". The Applicants propose to transfer from Kinder Morgan to Source Gas Distribution LLC all of Kinder Morgan's natural gas distribution assets, specifically including all Nebraska jurisdictional natural gas distribution assets, including any CPCNS issued to and held by Kinder Morgan in connection with its Nebraska jurisdictional utility operations.

Both before and after the Buy-Out Transaction is consummated, Kinder Morgan will continue to own, directly or through its subsidiary, KM Retail Holdco, all membership interests in Source Gas Distribution, the new "jurisdictional utility." Therefore, there will be no "change in control" of the jurisdictional utility, Source Gas Distribution, within the meaning of the Act when the Buy-Out Transaction is consummated. Only the stockholders of Kinder Morgan, the parent company of KM Retail Holdco and Source Gas Distribution, will change, as Kinder Morgan will become a privately-owned corporation.

B. Legal Standards

Section 66-1821 of the Act provides as follows:

No franchise or certificate of convenience granted to a jurisdictional utility shall be assigned, transferred, or leased unless the assignment, transfer, or lease has been approved by the commission as being consistent with the public interest.

As of the effective date of the Act, May 31, 2003, Kinder Morgan's jurisdictional utility assets came under the authority of the Commission, and Kinder Morgan was deemed to have been issued a certificate of convenience pursuant to Section 66-1853(2) of the Act. In connection with the Asset Transfer, the Applicants seek approval of the transfer of this CPCNS from Kinder Morgan to Source Gas Distribution. As further described in Sections IV and V of this Application and demonstrated in the pre-filed testimony and exhibits filed in connection herewith, the proposed Asset Transfer is consistent with the public interest.

Section 66-1828 of the Act requires the Commission to approve a reorganization or change of control of a jurisdictional utility. Section 66-1828 provides as follows:

(1) No reorganization or change of control of a jurisdictional utility shall take place without prior approval by the commission. The commission shall not approve any proposed reorganization or change of control if the commission finds, after public notice and public hearing, that the reorganization or change of control will adversely affect the utility's ability to serve its ratepayers.

(2) For purposes of this section, reorganization or change of control means any transaction which, regardless of the means by which it is accomplished results in a change in the ownership of a majority of the voting capital stock of a jurisdictional utility and does not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.

Presently, Kinder Morgan owns and operates its Nebraska jurisdictional retail natural gas distribution assets within its Kinder Morgan Retail division. After the proposed Asset Transfer from Kinder Morgan to Source Gas Distribution LLC, as described above, Kinder Morgan's subsidiary, KM Retail Holdco, will own all membership interests in Source Gas Distribution.

Therefore, because the Asset Transfer will not involve a "change in the ownership of a majority of the voting capital stock of a jurisdictional utility", it is questionable whether the Asset Transfer is a "reorganization or change of control" within the meaning of Section 66-1828. Nevertheless, to avoid any doubt, Kinder Morgan seeks approval of the Asset Transfer pursuant to Section 66-1828. As further described in Section IV below and demonstrated in the pre-filed testimony and exhibits filed in connection herewith, the proposed Asset Transfer will not adversely affect the utility's ability to serve its ratepayers.

The Applicants submit that the Buy-Out Transaction is not subject to approval pursuant to Section 66-1828 of the Act, because that transaction will not involve a "change in the ownership of a majority of the voting capital stock" of the new jurisdictional utility, Source Gas Distribution, and therefore does not constitute a "reorganization or change of control" within the meaning of Section 66-1828. The jurisdictional utility, Source Gas Distribution, will be owned by Kinder Morgan's subsidiary, KM Retail Holdco, after closing of the Buy-Out Transaction. Only the stockholders of Kinder Morgan will change. However, to the extent that the Commission determines that approval of the Buy-Out Transaction is required under Section 66-1828 of the Act, then the Applicants seek approval under that statute with respect to the Buy-Out Transaction.

II. JURISDICTION

The Commission's jurisdiction to grant the relief requested herein is derived from the Act, Neb. Rev. Stat. § 66-1801, et seq., and more specifically Neb. Rev. Stat. § 66-1821 and Neb. Rev. Stat. § 66-1828.

III. THE APPLICANTS

A. Applicant Names and Addresses

Kinder Morgan, Inc.
500 Dallas Street, Suite 1000
Houston, Texas, 77002

Source Gas Distribution LLC
370 Van Gordon Street
P.O. Box 281304
Lakewood, Colorado, 80228-8304

KM Retail Utilities Holdco LLC
500 Dallas Center, Suite 1000
Houston, Texas 77002

B. Names and Addresses of Persons Authorized to Receive Notices and Communications on behalf of Applicants

Stephen M. Bruckner
Russell A. Westerhold
Fraser Stryker PC LLO
500 Energy Plaza
409 South 17th Street
Omaha, Nebraska, 68102
(402) 341-6000

T. J. Carroll
370 Van Gordon Street
P.O. Box 281304
Lakewood, Colorado, 80228-8304
303-763-3269

Bud Becker
370 Van Gordon Street
P.O. Box 281304
Lakewood, Colorado, 80228-8304
(303) 763-3496

C. Description of Applicants and Entities Involved in Buy-Out Transaction

1. Historical Background and Business Activities of Applicants.

a. Kinder Morgan, Inc.

Kinder Morgan, Inc. was founded in 1936 as Kansas Pipeline and Gas Company. Kansas Pipeline and Gas Company's operations were premised on the idea that a market for natural gas service could be developed in the small communities and rural areas of Kansas and Nebraska. Kansas Pipeline and Gas Company evolved into KN Energy, Inc. ("KN Energy"), which was headquartered in Hastings, Nebraska and listed on the New York Stock Exchange in 1970. In 1982, the company headquarters were relocated to Lakewood, Colorado.

During the 1990s, the company grew from a \$300 million rural natural gas utility into one of the nation's largest integrated natural gas pipeline companies through a series of mergers and acquisitions. In 1998, KN Energy acquired the 10,000 mile Natural Gas Pipeline Company of America, which serves the Chicago market and several Midwestern states

In the 1990s, the United States natural gas industry moved from a fully regulated environment to a much more competitive one. Signifying its commitment to rural and small to medium-size communities, KN Energy voluntarily unbundled many of its retail natural gas services. A pioneer in the national deregulation effort, KN Energy launched its Choice Gas Program in Nebraska in 1997. Continuing today, Kinder Morgan's Nebraska customers are able to choose their own gas supplier based upon individual needs and circumstances.

In October of 1999, Kinder Morgan, Inc. merged with KN Energy. Kinder Morgan operates more than 40,000 miles of natural gas and petroleum transportation pipelines, with 150 terminals and 1.1 million natural gas distribution customers. Kinder Morgan's retail natural gas distribution businesses provide sales and services to approximately 240,000 residential, commercial, industrial, and agricultural customers in Colorado, Wyoming, and Nebraska.

Kinder Morgan presently provides retail natural gas distribution service to approximately 94,000 customers in approximately 182 Nebraska municipalities, located primarily in the western two-thirds of the state. A map of Kinder Morgan's Nebraska retail distribution system, indicating the Nebraska municipalities served at retail by Kinder Morgan, is attached as Exhibit 1. Kinder Morgan's retail distribution operations in Nebraska employ approximately 321 persons.

b. **Source Gas Distribution LLC ("Source Gas Distribution") and KM Retail Utilities Holdco LLC ("KM Retail Holdco").**

Source Gas Distribution is a limited liability company formed by Kinder Morgan to own the jurisdictional utility assets of Kinder Morgan's former Retail Division and to use those assets to operate as a jurisdictional retail natural gas utility in the States of Nebraska, Colorado and Wyoming. The President of Source Gas Distribution is Daniel Watson, who is the current President of the Kinder Morgan Retail Division. KM Retail Holdco is a limited liability company formed by Kinder Morgan to own all of the membership interests in the new jurisdictional utility, Source Gas Distribution.

Exhibit 2 to this Agreement is a copy of an organizational chart depicting the corporate structure of the Applicants after the Asset Transfer.

2. Description of Parties To Proposed Buy-Out Transaction.

On August 28, 2006, Kinder Morgan, Knight Holdco and Knight Acquisition signed a merger agreement pursuant to which, if certain conditions are satisfied or waived, Knight Acquisition will be merged with and into Kinder Morgan, with Kinder Morgan continuing as the surviving company in the merger. Immediately following the merger, Kinder Morgan, as the surviving corporation in the merger, will become a privately-held company, wholly owned by Knight Holdco or one or more of its subsidiaries. Immediately following the closing of the merger, Knight Holdco will be owned by entities and individuals of the Investor Group. The Investor Group will consist of:

- The Sponsor Investors, which consist of certain private equity funds and other entities providing the equity financing for the merger, and
- The Management Group Members, consisting of certain current or former directors or officers of Kinder Morgan (or entities controlled by such persons),

who are directly or indirectly reinvesting all or a portion of their equity interests in Kinder Morgan and/or cash in exchange for equity interests in Knight Holdco.

The Sponsor Investors are affiliates of GS Capital Partners V Fund, L.P., American International Group, Inc., The Carlyle Group and Riverstone Holdings LLC and their permitted assignees. The Management Group Members are Richard D. Kinder, Chairman and Chief Executive Officer of Kinder Morgan, Michael Morgan and Fayez Sarofim, directors of Kinder Morgan, William Morgan, a founder of Kinder Morgan, Portcullis Partners, LP, an investment partnership in which Michael Morgan and William Morgan have an interest, and certain other members of senior management of Kinder Morgan.

At the time of the merger, each outstanding share of Kinder Morgan (other than any shares owned by Knight Holdco, Knight Acquisition, subsidiaries of Kinder Morgan, any stockholders who are entitled to and who properly exercise appraisal rights under Kansas law and all or a portion of the shares owned by the Management Group Members) will be converted into the right to receive \$107.50 in cash, without interest. This Buy-Out Transaction, valued at approximately \$22 billion, will be financed through a combination of equity contributed by the Investor Group and debt financing, including the assumption of approximately \$7 billion of debt.

Richard D. Kinder is expected to continue as Chairman and CEO of Kinder Morgan following the close of the merger. The merger is expected to be completed by early 2007, subject to the terms and conditions of the merger agreement. The Buy-Out Transaction is further described in Kinder Morgan's SEC Form 8-K, filed August 28, 2006, and attached as Exhibit 3. *See also* Direct Testimony of Kimberly A. Dang, attached as Exhibit 5.

The Buy-Out Transaction will not impact Kinder Morgan's public utility operations or services in Nebraska. It is not expected to result in any change in Kinder Morgan's management

team under the leadership of Richard D. Kinder, who is Chairman and CEO of Kinder Morgan, Inc.², or in the management team of the public utility businesses under the leadership of Dan Watson, who is President of those businesses. Mr. Kinder's position and role as Chairman and CEO of Kinder Morgan, and Mr. Watson's position and role as President of the public utility businesses, are not expected to change as a result of the Buy-Out Transaction. Under the proposed Asset Transfer, a transfer of public utility assets and certificates of convenience from Kinder Morgan to a wholly owned indirect subsidiary would occur. As described in this Application, Kinder Morgan proposes to reorganize internally the corporate structure of its public utility businesses in order to hold those businesses indirectly through a holding company, KM Retail Utility Holdco, LLC.

Neither the Asset Transfer nor the Buy-Out Transaction is expected to result in a change in the management of Kinder Morgan or its utility businesses. As noted above, Richard D. Kinder is expected to continue in his position as Chairman and Chief Executive Officer of Kinder Morgan and Dan Watson is expected to continue in his position as President of the retail utility businesses. No changes will occur in utility services, operations, tariffs, or rates to Nebraska customers as a result of this Application. The Asset Transfer and Buy-Out Transaction will be seamless to customers.

3. Approvals from Other State Regulatory Bodies in Connection with the Proposed Transactions.

Applicants anticipate that state regulatory approvals relating to the Asset Transfer and/or Buy-Out Transaction will be required from the Colorado Public Utility Commission and the

² Knight Holdco, which will control Kinder Morgan upon closing of the Buy-Out Transaction, is expected to have a Board of Managers comprised of eleven members, six of which will be designated by the SponsorInvestors.

Wyoming Public Service Commission. Applicants are requesting approvals from all state regulatory commissions by December 31, 2006.

IV. DESCRIPTION OF THE TRANSACTIONS

A. The Transfer and Aggregation of Kinder Morgan's Retail Assets

1. The Transfer of Assets

As noted, in connection with the Asset Transfer, Kinder Morgan will transfer all of its retail natural gas distribution assets, including all assets of Kinder Morgan's local distribution business in Nebraska, to Source Gas Distribution. This transfer of assets will include any certificate of convenience held by Kinder Morgan with respect to its retail natural gas distribution operations in Nebraska.

As a result of the Asset Transfer, Kinder Morgan's local distribution business in Nebraska will be transferred from a division of Kinder Morgan to Source Gas Distribution. Source Gas Distribution will assume any CPCNS now owned by Kinder Morgan. Kinder Morgan seeks approval from the Commission of the Asset Transfer pursuant to Sections 66-1821 and 66-1828 of the Act.

B. The Consummation of the Buy-Out Transaction

Under the terms of the Agreement, upon satisfaction or waiver of certain conditions, each outstanding share of common stock of Kinder Morgan, other than shares owned by Knight Holdco, LLC, Knight Acquisition Co., subsidiaries of Kinder Morgan any stockholders who properly exercise appraisal rights under Kansas law, and all or portion of the shares held by the Management Group Members, will be cancelled and converted into the right to receive \$107.50 in cash, without interest. Knight Holdco has obtained conditional equity and debt financing commitments for the proposed Buy-Out Transaction, the proceeds of which will be sufficient for

Knight Holdco to pay or cause to be paid the aggregate Agreement consideration and all related fees and expenses.

Kinder Morgan's Board of Directors, on the unanimous recommendation of a special committee comprised entirely of independent directors, has approved the Agreement and will recommend that Kinder Morgan's stockholders approve and adopt the Buy-Out Transaction. Additionally, Chairman and CEO Richard D. Kinder has agreed to vote his 24 million shares of Kinder Morgan stock in favor of the transaction. After the closing of the Buy-Out Transaction, Mr. Kinder is expected to continue as Chairman and CEO of Kinder Morgan.

As stated in Section I of the Application, Kinder Morgan does not believe that the Buy-Out Transaction requires the Commission's approval pursuant to Neb. Rev. Stat. § 66-1828 because the merger and purchase of Kinder Morgan's stock will have no effect on the ultimate ownership of any of Kinder Morgan's Nebraska jurisdictional assets. However, should the Commission disagree, Applicants seek the approval of the Buy-Out Transaction pursuant to Section 66-1828 of the Act.

V. THE TRANSACTIONS DESCRIBED IN THIS APPLICATION ARE IN THE PUBLIC INTEREST AND WILL NOT ADVERSELY AFFECT KINDER MORGAN'S ABILITY TO SERVE ITS RATEPAYERS

A. Jurisdictional Facilities in Nebraska Affected by Asset Transfer

Presently, Kinder Morgan's retail natural gas distribution assets are owned by Kinder Morgan, Inc. and operated within a division of the company known as "Kinder Morgan Retail". In connection with the Asset Transfer, the Applicants propose to transfer from Kinder Morgan to Source Gas Distribution LLC all of Kinder Morgan's natural gas distribution assets. These assets include all Nebraska jurisdictional natural gas distribution assets, including any CPCNS issued to and held by Kinder Morgan in connection with its Nebraska jurisdictional utility operations. As

noted in Section I.B. of this Application, as of the effective date of the Act, May 31, 2003, Kinder Morgan's jurisdictional utility assets came under the authority of the Commission, and Kinder Morgan was deemed to have been issued a certificate of convenience pursuant to Section 66-1853(2) of the Act.

B. The Proposed Transactions are Consistent With the Public Interest and Will Not Adversely Affect the Utility's ability to Serve Its Ratepayers

As previously stated, in connection with the Asset Transfer, the Applicants seek approval of the transfer of any certificate of convenience held by Kinder Morgan, from Kinder Morgan to Source Gas Distribution. As explained below and demonstrated in the pre-filed testimony filed in connection herewith, the proposed Asset Transfer, including the transfer of the certificate of convenience, is consistent with the public interest pursuant to Section 66-1821 of the Act.

Section 66-1828 of the Act requires the Commission to approve a reorganization or change of control of a jurisdictional utility. A "reorganization or change of control" is defined as "any transaction which, regardless of the means by which it is accomplished results in a change of the ownership of a majority of the voting capital stock of a jurisdictional utility." Under Section 66-1828, "the commission shall not approve any proposed reorganization or change of control if the commission finds, after public notice and public hearing, that the reorganization or change of control will adversely affect the utility's ability to serve its ratepayers."

Kinder Morgan presently owns and operates its Nebraska jurisdictional retail natural gas distribution assets within its Kinder Morgan Retail Division. After the proposed Asset Transfer from Kinder Morgan to its wholly-owned subsidiary, Source Gas Distribution, Kinder Morgan's subsidiary, KM Retail Holdco, will own all membership interest in Source Gas Distribution. Therefore, because the Asset Transfer will not involve a "change in the ownership of a majority of the voting capital stock of a jurisdictional utility", it is questionable whether the Asset

Transfer is a "reorganization or change of control" within the meaning of Section 66-1828. Nevertheless, to avoid any doubt, Kinder Morgan seeks approval of the Asset Transfer pursuant to Section 66-1828 to the extent required. As further explained below and in the pre-filed testimony and exhibits filed in connection herewith, the proposed Asset Transfer will not adversely affect the utility's ability to serve its ratepayers.

Finally, as explained in Section I.B. of this Application, the Buy-Out Transaction is not subject to approval pursuant to Section 66-1828 of the Act. However, to the extent that the Commission determines that approval of the Buy-Out Transaction is required under Section 66-1828 of the Act, Applicants submit that this transaction will not adversely affect ratepayers and therefore must be approved by the Commission.

1. Financial Integrity of Kinder Morgan and Source Gas Distribution.

Following the Asset Transfer and Buy-Out Transaction, the Nebraska utility operations will continue to have access to adequate capital. Source Gas Distribution will be an indirect subsidiary of Kinder Morgan. Kinder Morgan's SEC Form 8-K, filed August 28, 2006, provides information relating to the Buy-Out Transaction and is attached as Exhibit 3. The transfer of Kinder Morgan's public utility assets into a separate legal entity, Source Gas Distribution, and the direct ownership and control of Source Gas Distribution by Kinder Morgan Retail Utility Holdco LLC, will provide a level of separation between the public utility business and Kinder Morgan's non-utility businesses. Source Gas Distribution will maintain separate books and records for rate making purposes, and will act in accordance with applicable regulatory rules and orders concerning affiliate transactions with Kinder Morgan and other affiliates.

2. Effect on Tariffs and Rates.

There will be no change in any of the rates or terms and conditions of Kinder Morgan's current Commission-approved Nebraska Gas Tariff as a result of the Asset Transfer or the Buy-Out Transaction. Source Gas Distribution will continue to apply and abide by the current Nebraska Gas Tariff after the Asset Transfer. Source Gas Distribution will file a notice of tariff adoption and make any name change filings that are necessary and proper.

Furthermore, the Applicants will not seek recovery from Nebraska jurisdictional ratepayers of any transaction or transition costs related to the Asset Transfer or Buy-Out Transaction. There will be no acquisition adjustment applied to rates as a result of these transactions.

On June 2, 2006, Kinder Morgan filed an Application for Approval of a General Rate Increase, which is pending at Commission Docket Number NG-0036. The Asset Transfer and Buy-Out Transaction described herein will occur, if at all, outside the Test Year set forth in the aforesaid Application for Approval of a General Rate Increase, and any impact on the cost of service is not a "known and measurable change" within the meaning of the Act and generally accepted ratemaking principles. The Asset Transfer and Buy-Out Transaction therefore will have no effect on the pending Application for Approval of a General Rate Increase. Subject to and without waiving any appeal or other legal rights, the Applicants herein will accept the result obtained in the pending rate proceeding, Commission Docket Number NG-0036.

The continuity of the current Nebraska Gas Tariff and the effect of the proposed Asset Transfer and Buy-Out Transaction on the pending rate proceeding are described and explained further in the pre-filed testimony of Mr. Daniel Watson.

3. Continuity of Management and Service.

The management of Kinder Morgan, Inc. is not expected to change as a result of the internal corporate restructuring and management buy-out described in this Application. Richard Kinder, the present Chairman and CEO of Kinder Morgan, is expected to continue as Chairman and CEO of Kinder Morgan after the Buy-Out Transaction. Likewise, Daniel E. Watson, the current President of Kinder Morgan's Retail Division, is expected to continue as the President of the new Source Gas Distribution. Furthermore, with limited exceptions, the current management and employees of Kinder Morgan's Retail Division will be transferred to the new Source Gas Distribution and will continue to serve the utility's jurisdictional ratepayers in Nebraska, Wyoming and Colorado. The utility's offices and management will continue to be located in Lakewood, Colorado and the books and records of the utility will continue to be housed at that location after the transactions described in this Application. The management of Kinder Morgan and Source Gas Distribution will continue to be thoroughly qualified and experienced after the Buy-Out Transaction.

Subject to the terms of the merger agreement, it is expected that Kinder Morgan's benefit plans and compensation arrangements will be honored and employees will be provided with compensation and benefits that are substantially comparable, in the aggregate, to those in effect before the Buy Out Transaction. As a general matter, employee compensation after the Buy-Out Transaction will not include equity based awards such as stock options since Kinder Morgan will no longer have publicly traded stock. Existing union contracts will continue to be honored.

The Kinder Morgan Choice Gas Program will continue after the Asset Transfer and Buy-Out Transaction, and all jurisdictional customers of the new utility, Source Gas Distribution, will

be able to choose their own supplier of the gas commodity. Source Gas Distribution will continue to manage and monitor the process so that gas supply costs remain stable and reasonable, and price volatility is mitigated to the extent feasible. There will be no changes in gas supplies or upstream delivery arrangements as a result of the internal corporate restructuring and management buy out described in this Application. The existing gas supply and upstream delivery arrangements will continue to be safe, reliable and adequate.

The Applicants further note that the Asset Transfer and Buy-Out Transaction will result in little if any changes to the day-to-day business of the utility operations. As set forth above, the Asset Transfer and Buy-Out Transaction will not affect current gas supply contracting and management. There will be no change to systems operation and maintenance activities. Furthermore, safety, service quality and reliability, customer service, and billing operations will all remain unchanged. As stated more fully above, the management team of the utility are expected to remain the same.

Finally, Kinder Morgan and Source Gas Distribution have developed and will implement a communications plan for ratepayers and other members of the general public regarding the Asset Transfer and the new jurisdictional utility, Source Gas Distribution LLC.

In summary, the transactions described in this Application will be seamless for the Applicants' Nebraska ratepayers. Those ratepayers will continue to be served through the same facilities and by the same company employees. Thus, Kinder Morgan's substantial knowledge and experience in the management and operation of a retail natural gas distribution utility will continue after the proposed Asset Transfer and Buy-Out Transaction.

The continuity of service and management is further described and explained in the pre-filed testimony of Mr. Daniel Watson.

VI. CONCLUSION

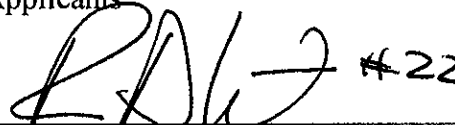
WHEREFORE, for the reasons described in this Application and the supporting pre-filed testimony and exhibits, the Applicants respectfully request that the Commission grant this Application in the following particulars:

1. Approve the Asset Transfer, including the transfer of any authority from Kinder Morgan, Inc. to Source Gas Distribution LLC, pursuant to Neb. Rev. Stat. § 66-1821.
2. Approve the Asset Transfer from Kinder Morgan, Inc. to Source Gas Distribution LLC, pursuant to Neb. Rev. Stat. § 66-1828.
3. In the event the Commission determines that Neb. Rev. Stat. § 66-1828 is applicable to the Buy-Out Transaction, approve the Buy-Out Transaction pursuant to Section 66-1828.
4. Grant such other and further relief as may be deemed necessary and proper in accordance with the Act.

Dated October 3, 2006.

KINDER MORGAN, INC.,
KM RETAIL UTILITIES HOLDCO LLC, and
SOURCE GAS DISTRIBUTION LLC,
Applicants

By:

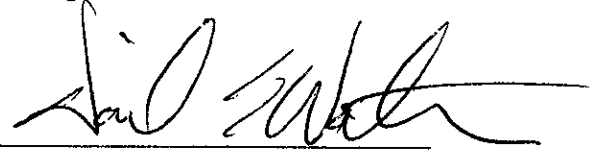
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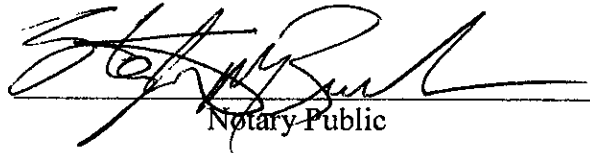
VERIFICATION

Daniel E. Watson, being first duly sworn on oath, deposes and states that (1) he is the President of Source Gas Distribution LLC and is authorized to make this Verification on behalf of such company; and (2) he has read the foregoing Joint Application and the information set forth therein is true to the best of his knowledge and belief.



Daniel E. Watson

Subscribed and sworn to before me this 27th day of September, 2006.


Notary Public

(SEAL)

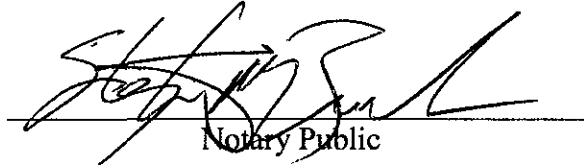
VERIFICATION

Daniel E. Watson, being first duly sworn on oath, deposes and states that (1) he is the President of KM Retail Utilities Holdco LLC and is authorized to make this Verification on behalf of such company; and (2) he has read the foregoing Joint Application and the information set forth therein is true to the best of his knowledge and belief.



Daniel E. Watson

Subscribed and sworn to before me this 27th day of September, 2006.


Notary Public

(SEAL)

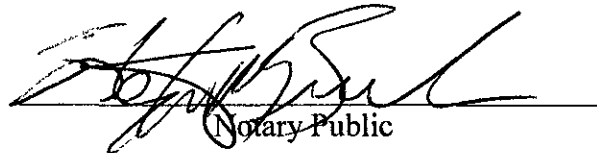
VERIFICATION

Daniel E. Watson, being first duly sworn on oath, deposes and states that (1) he is the Vice President of Kinder Morgan, Inc. and is authorized to make this Verification on behalf of such company; and (2) he has read the foregoing Joint Application and the information set forth therein is true to the best of his knowledge and belief.



Daniel E. Watson

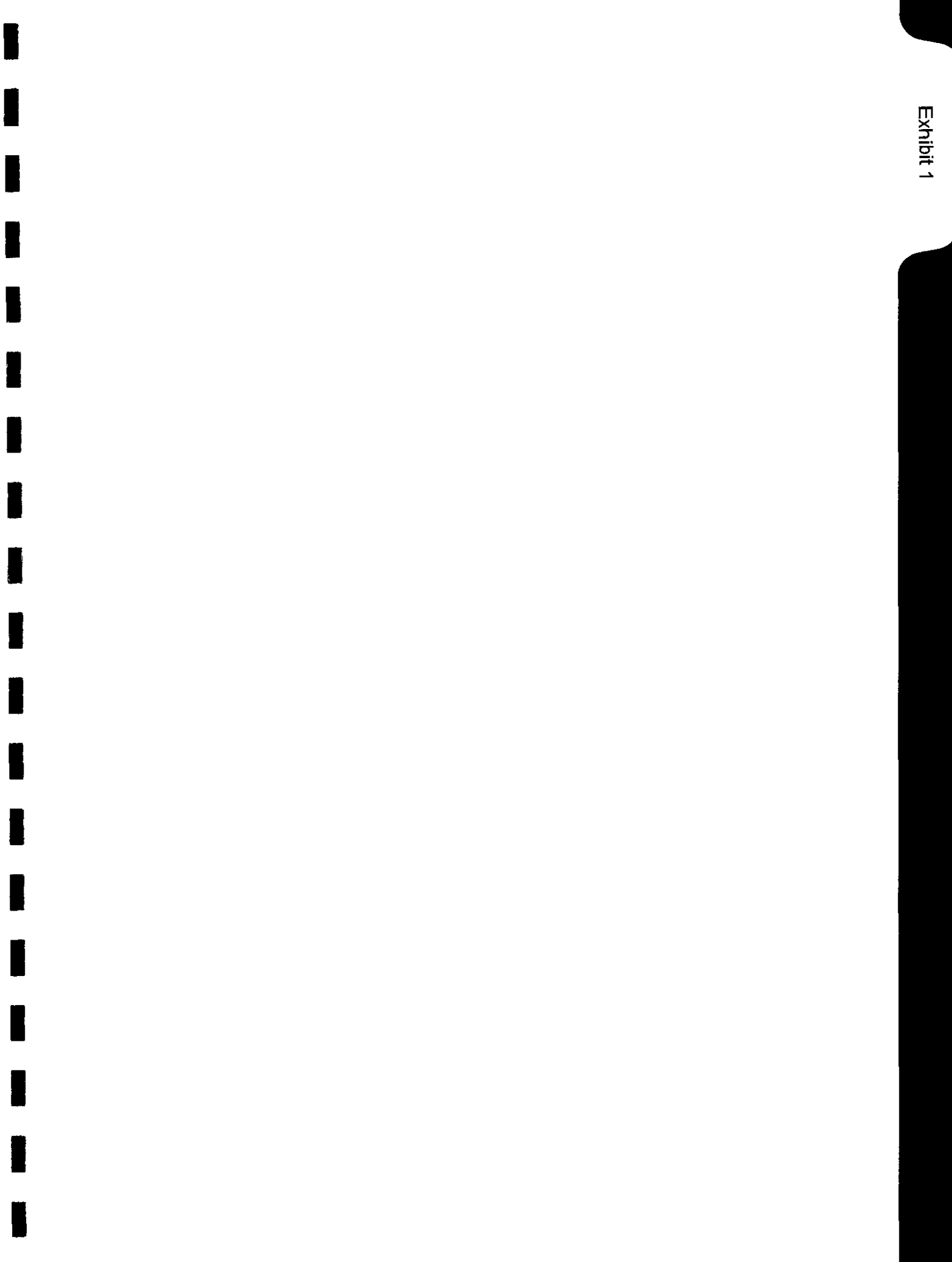
Subscribed and sworn to before me this 27th day of September, 2006.

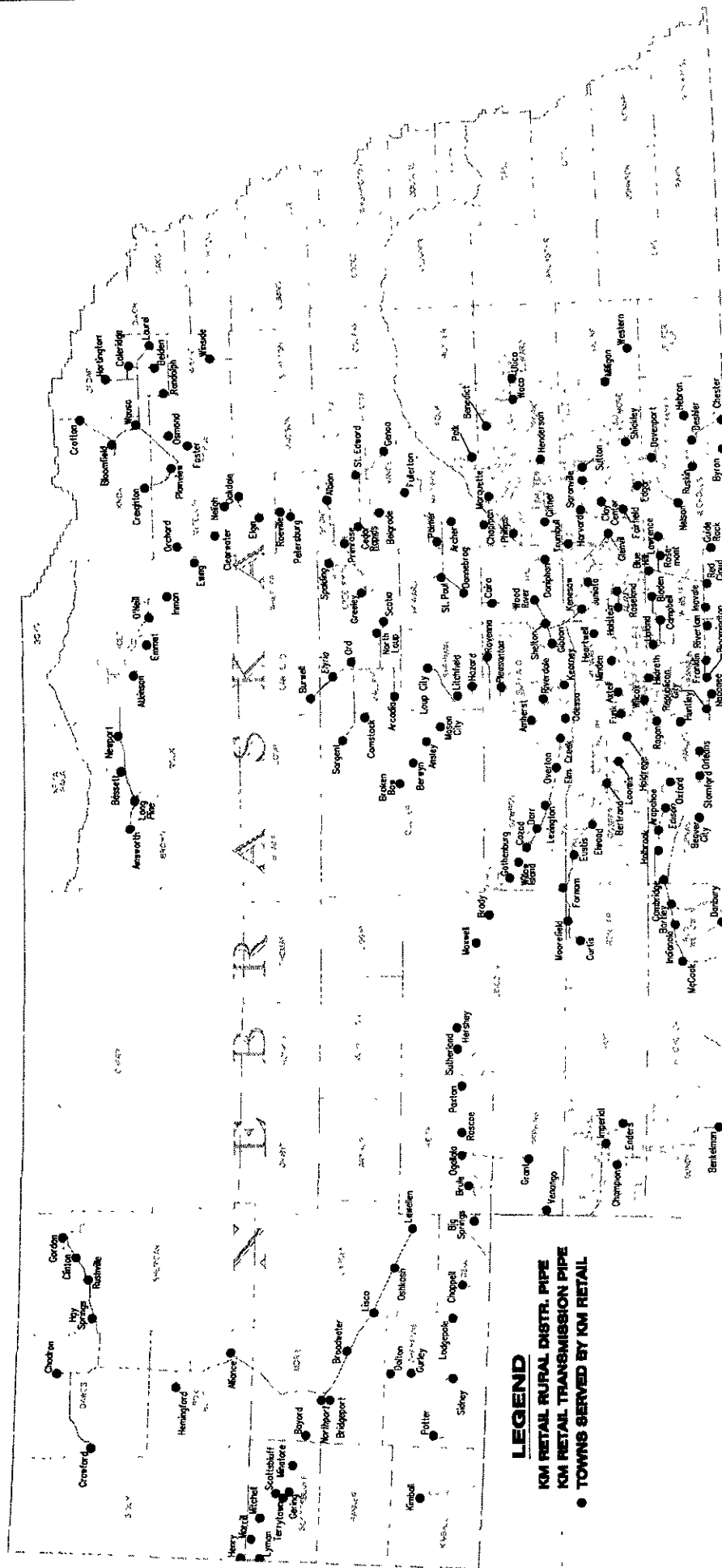

Notary Public

(SEAL)

LIST OF EXHIBITS

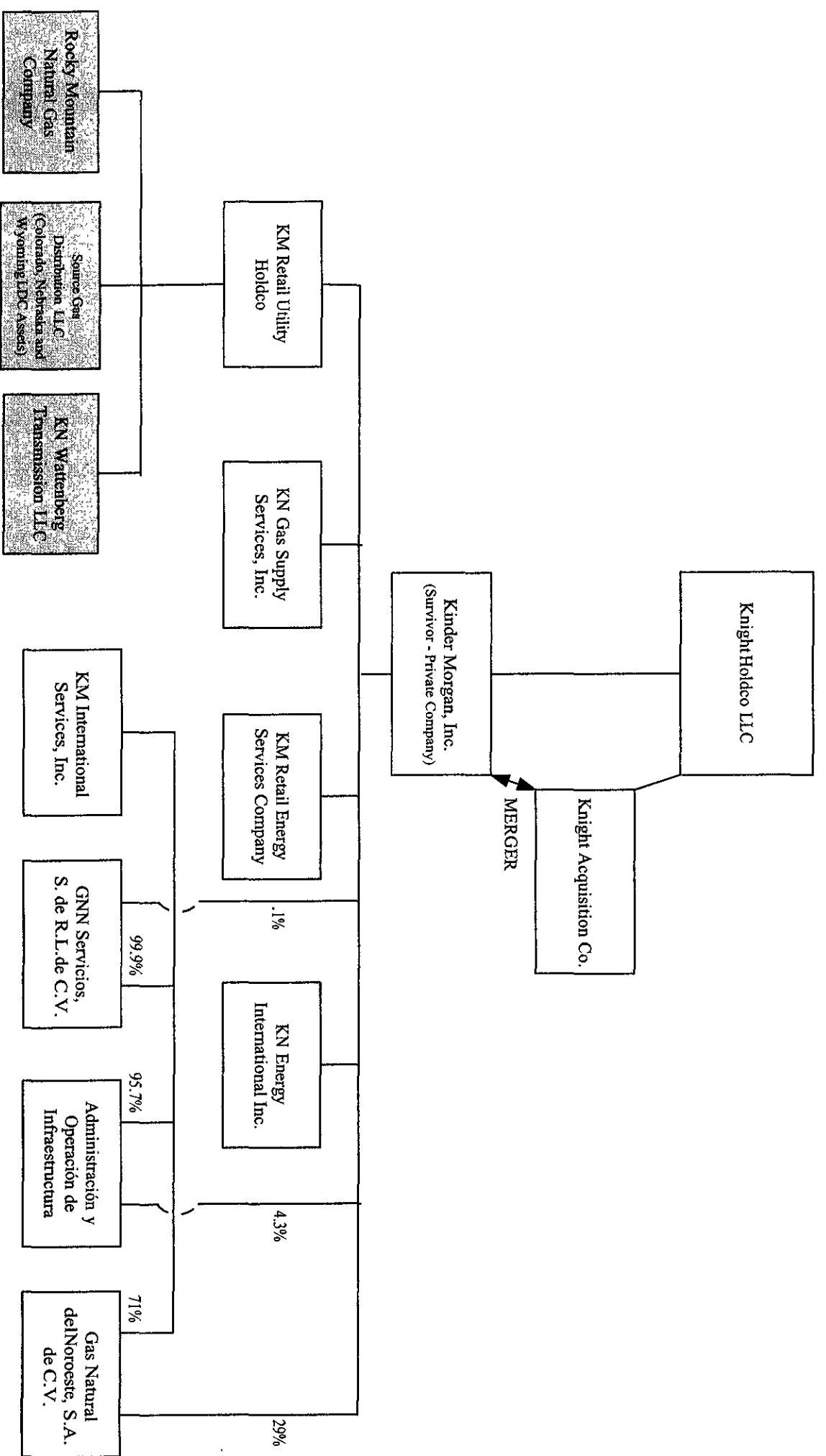
- Exhibit 1 Map of Kinder Morgan's Nebraska retail distribution system list of Nebraska municipalities served at retail by Kinder Morgan
- Exhibit 2 Chart depicting Post-Transaction Corporate Structure of Applicants
- Exhibit 3 Kinder Morgan SEC Form 8-K dated August 28, 2006
- Exhibit 4 Prepared Testimony of Daniel E. Watson
- Exhibit 5 Prepared Testimony of Kimberly A. Dang





LEGEND

- KM RETAIL RURAL DISTR. PIPE
- KM RETAIL TRANSMISSION PIPE
- TOWNS SERVED BY KM RETAIL



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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 28, 2006

KINDER MORGAN, INC.
(Exact name of registrant as specified in its charter)

Kansas
(State or other jurisdiction
of incorporation)

1-06446
(Commission
File Number)

48-0290000
(I.R.S. Employer
Identification No.)

500 Dallas Street, Suite 1000
Houston, Texas 77002
(Address of principal executive offices, including zip code)

713-369-9000
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☒ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry Into a Material Definitive Agreement.

On August 28, 2006, Kinder Morgan, Inc., a Kansas corporation (the "Company"), entered into an Agreement and Plan of Merger (the "Agreement") with Knight Holdco LLC, a Delaware corporation ("Parent"), and Knight Acquisition Co., a Kansas corporation and a wholly-owned subsidiary of Parent ("Merger Sub"). Under the terms of the Merger Agreement, Merger Sub will be merged with and into the Company, with the Company continuing as the surviving corporation and a wholly-owned subsidiary of Parent (the "Merger"). Parent is owned by a consortium of private investment firms affiliated with GS Capital Partners V Fund, L.P., AIG Global Asset Management Holdings Corp., Carlyle Partners IV, L.P. and Carlyle/Riverstone Energy Partners III, L.P. (collectively, the "Sponsors").

At the effective time of the Merger, each outstanding share of common stock of the Company (the "Common Stock"), other than any shares owned by Parent, Merger Sub, the Company or its subsidiaries, any stockholders who are entitled to and who properly exercise appraisal rights under Kansas law and the Rollover Stockholders (as defined below), will be cancelled and converted into the right to receive \$107.50 in cash, without interest.

The Board of Directors of the Company approved the Merger Agreement on the unanimous recommendation of a Special Committee comprised entirely of independent directors (the "Special Committee").

The Chairman and Chief Executive Officer of the Company, Richard D. Kinder, together with certain other members of management, Company co-founder Bill Morgan, and two current members of the Company's Board of Directors, Faye Sarofim and Mike Morgan (collectively, the "Rollover Stockholders") have agreed, at the request of the Sponsors, to contribute a portion of their Company equity into Parent. Richard D. Kinder has also agreed to vote his shares in favor of the Merger.

The Company has made customary representations, warranties and covenants in the Agreement, which expire at the effective time of the Merger. The Company may not solicit competing proposals or, subject to exceptions that permit the Company's Board of Directors (or the Special Committee) to take actions required by their fiduciary duties, participate in any discussions or negotiations regarding alternative proposals.

Parent has obtained conditional equity and debt financing commitments for the transactions contemplated by the Agreement, the aggregate proceeds of which will be sufficient for Parent to pay the aggregate merger consideration and all related fees and expenses. Consummation of the Merger is not subject to a financing condition, but is subject to various other conditions, including approval of the Merger by the Company's stockholders, expiration or termination of applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and other customary closing conditions. The parties expect to close the transaction by early 2007.

The Agreement may be terminated under certain circumstances, including if the Company's Board of Directors (or the Special Committee) has determined in good faith that it has received a superior proposal and otherwise complies with certain terms of the Agreement. Upon the termination of the Agreement, under specified circumstances, the Company will be required to reimburse Parent and Merger Sub for their transaction expenses up to \$45,000,000 and under specified circumstances, the Company will be required to pay Parent a termination fee of \$215,000,000. Additionally, under specified circumstances, Parent will be required to pay the Company a termination fee of \$215,000,000. The Sponsors have severally agreed to guarantee their proportionate liability of any such amounts payable by Parent to the Company.

The foregoing summary of the Agreement and the transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Agreement, which is attached as Exhibit 2.1 and incorporated herein by reference.

The Special Committee engaged The Blackstone Group L.P. ("Blackstone") and Morgan Stanley & Co. Incorporated

("Morgan Stanley" and, together with Blackstone, the "Financial Advisors") to serve as financial advisors to the Special Committee. On August 27, 2006, Blackstone and Morgan Stanley each delivered an opinion to the Special Committee and the Board of Directors that, as of the date of the opinion, the merger consideration was fair, from a financial point of view, to the stockholders of the Company (other than Parent, Merger Sub and the Rollover Stockholders).

The Agreement has been included to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Agreement were made only for purposes of such agreement and as of specific dates, were solely for the benefit of the parties to such agreement, and may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures exchanged between the parties in connection with the execution of the Agreement. The representations and warranties may have been made for the purposes of allocating contractual risk between the parties to the agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company, Parent, or Merger Sub or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

Important Additional Information Regarding the Merger will be Filed with the SEC:

In connection with the proposed Merger, the Company will file a proxy statement with the Securities and Exchange Commission (the "SEC"). INVESTORS AND SECURITY HOLDERS ARE ADVISED TO READ THE PROXY STATEMENT WHEN IT BECOMES AVAILABLE BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION ABOUT THE MERGER AND THE PARTIES TO THE MERGER. Investors and security holders may obtain a free copy of the proxy statement (when available) and other relevant documents filed with the SEC from the SEC's website at <http://www.sec.gov>. The Company's security holders and other interested parties will also be able to obtain, without charge, a copy of the proxy statement and other relevant documents (when available) by directing a request by mail or telephone to Investor Relations, Kinder Morgan, Inc., 500 Dallas Street, Suite 1000, Houston, Texas 77002, telephone (713) 369-9490, or from the Company's website, www.kindermorgan.com.

The Company and its directors, executive officers and other members of its management and employees may be deemed to be participants in the solicitation of proxies from the Company's stockholders with respect to the Merger. Information about the Company's directors and executive officers and their ownership of the Company's common stock is set forth in the proxy statement for the Company's 2006 Annual Meeting of Stockholders, which was filed with the SEC on April 3, 2006. Stockholders and investors may obtain additional information regarding the interests of the Company and its directors and executive officers in the Merger, which may be different than those of the Company's stockholders generally, by reading the proxy statement and other relevant documents regarding the Merger, which will be filed with the SEC.

Item 7.01 Regulation FD Disclosure.

In accordance with General Instruction B.2. of Form 8-K, the following information shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act.

On August 28, 2006, the Company issued a press release announcing that it had entered into the Agreement. A copy of the press release is attached as Exhibit 99.1 hereto.

Forward-Looking Statements

This Current Report and the exhibits furnished herewith contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements include statements regarding expectations as to the completion of the Merger and the other transactions contemplated by the Agreement. The forward-looking statements contained herein involve risks and uncertainties that could cause actual results to differ materially from those referred to in the forward-looking statements. Such risks include, but are not limited to, the ability of the parties to the Agreement to satisfy the conditions to closing specified in the Agreement. More information about the Company and other risks related to the Company are detailed in the Company's most recent annual report on Form 10-K for the fiscal year ended December 31, 2005, and its quarterly reports on Form 10-Q and current reports on Form 8-K as filed with the SEC. The Company does not undertake an obligation to update forward-looking statements.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits:

Exhibit 2.1 Agreement and Plan of Merger, dated as of August 28, 2006, among the Company, Knight Holdco LLC and Knight Acquisition Co.*

Exhibit 99.1 Press Release, dated August 28, 2006

* Schedules and Exhibits omitted pursuant to Section 601(b)(2) of Regulation S-K. The Company agrees to furnish supplementally a copy of any omitted schedule to the SEC upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

KINDER MORGAN, INC.

By /s/ Joseph Listengart

Name: Joseph Listengart

Title: Vice President and General Counsel

Date: August 28, 2006

EXHIBIT INDEX

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EXHIBIT 2.1

AGREEMENT AND PLAN OF MERGER

among

KNIGHT HOLDCO LLC,

KNIGHT ACQUISITION CO.

and

KINDER MORGAN, INC.

Dated as of August 28, 2006

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AGREEMENT AND PLAN OF MERGER, dated as of August 28, 2006 (this "Agreement"), among Knight Holdco LLC, a Delaware limited liability company ("Parent"), Knight Acquisition Co., a Kansas corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and Kinder Morgan, Inc., a Kansas corporation (the "Company").

WITNESSETH :

WHEREAS, the parties intend that Merger Sub be merged with and into the Company, with the Company surviving that merger on the terms and subject to the conditions set forth in this Agreement (the "Merger");

WHEREAS, the Board of Directors of the Company, acting upon the unanimous recommendation of the Special Committee, has unanimously (with three directors abstaining) (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement, (ii) approved the execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby, including the Merger and (iii) resolved to recommend adoption of this Agreement by the stockholders of the Company;

WHEREAS, the Board of Directors of Merger Sub and the Members of Parent have each unanimously approved this Agreement and declared it advisable for Merger Sub and Parent, respectively, to enter into this Agreement;

WHEREAS, certain existing stockholders of the Company desire to contribute Shares (as hereinafter defined) to Parent or one or more of its Subsidiaries immediately prior to the Effective Time in exchange for limited liability company interests of Parent;

WHEREAS, concurrently with the execution of this Agreement, as a condition and inducement to Parent and Merger Sub's willingness to enter into this Agreement, Parent, Merger Sub and certain stockholders of the Company are entering into a voting agreement, of even date herewith (the "Voting Agreement") pursuant to which such stockholders have agreed, subject to the terms thereof, to vote their respective Shares (as defined below) in favor of adoption of this Agreement;

WHEREAS, concurrently with the execution of this Agreement, and as a condition and inducement to the Company's willingness to enter into this Agreement, each of GS Capital Partners V Fund, L.P., GS Global Infrastructure Partners I, L.P., AIG Financial Products Corp., Carlyle Partners IV, L.P. and Carlyle/Riverstone Global Energy and Power Fund III, L.P. (together, the "Guarantors") have provided a guarantee (together, the "Guarantees") in favor of the Company, in the form set forth on Section 4.10 of the Parent Disclosure Letter, with respect to the performance by Parent and Merger Sub, respectively, of their obligations under this Agreement; and

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and the transactions contemplated by this Agreement and also to prescribe certain conditions to the Merger as specified herein.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, Parent, Merger Sub and the Company hereby agree as follows:

ARTICLE I

THE MERGER

Section 1.1 The Merger. At the Effective Time (as hereinafter defined), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the applicable provisions of the General Corporation Code of the State of Kansas (the "KGCC"), Merger Sub shall be merged with and into the Company, whereupon the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving company in the Merger (the "Surviving Corporation") and an wholly owned subsidiary of Parent.

Section 1.2 Closing. The closing of the Merger (the "Closing") shall take place at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York at 10:00 a.m., local time, on a date to be specified by the parties (the "Closing Date") which shall be no later than the later of (i) the second Business Day after the satisfaction or waiver (to the extent permitted by applicable Law (as hereinafter defined)) of the conditions set forth in ARTICLE VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) or (ii) the date of completion of the Marketing Period (or, if Parent so notifies the Company, a date during the Marketing Period not less than three Business Days following such notice to the Company), or at such other place, date and time as the Company and Parent may agree in writing.

Section 1.3 Effective Time. On the Closing Date, the Company shall cause the Merger to be consummated by executing and filing a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Kansas in accordance with Section 17-6701 of the KGCC. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Kansas, or at such later date or time as may be agreed by Parent and the Company in writing and specified in the Certificate of Merger in accordance with the KGCC (such time as the Merger becomes effective is referred to herein as the "Effective Time").

Section 1.4 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and the applicable provisions of the KGCC.

Section 1.5 Articles of Incorporation and By-laws of the Surviving Corporation.

(a) The articles of incorporation of the Company, as in effect immediately prior to the Effective Time, shall be the articles of incorporation of the Surviving Corporation until thereafter amended in accordance with the provisions thereof, hereof and applicable Law, in each case consistent with the obligations set forth in Section 5.9.

(b) The by-laws of Merger Sub, as in effect at the Effective Time, shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with the provisions thereof, hereof and applicable Law, in each case consistent with the obligations set forth in Section 5.9.

Section 1.6 Directors. Subject to applicable Law, the directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

Section 1.7 Officers. The officers of the Company immediately prior to the Closing Date shall be the initial officers of the Surviving Corporation and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

ARTICLE II

CONVERSION OF SHARES; EXCHANGE OF CERTIFICATES

Section 2.1 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Merger Sub or the holders of any securities of the Company or Merger Sub:

(a) Conversion of Company Common Stock. Subject to Section 2.1(b), 2.1(d) and 2.1(e), each issued and outstanding share of common stock, par value \$5.00 per share, of the Company outstanding immediately prior to the Effective Time (such shares, collectively, "Company Common Stock", and each, a "Share"), other than (i) any Shares held by any direct or indirect wholly owned subsidiary of the Company, which Shares shall remain outstanding except that the number of such Shares shall be appropriately adjusted in the Merger (the "Remaining Shares"), (ii) any Cancelled Shares (as defined, and to the extent provided in, Section 2.1(b)) and (iii) any Dissenting Shares (as defined, and to the extent provided in, Section 2.1(e)) shall thereupon be converted automatically into and shall thereafter represent the right to receive \$107.50 in cash (the "Merger Consideration"). All Shares that have been converted into the right to receive the Merger Consideration as provided in this Section 2.1 shall be automatically cancelled and shall cease to exist, and the holders of certificates which immediately prior to the Effective Time represented such Shares shall cease to have any rights with respect to such Shares other than the right to receive the Merger Consideration.

(b) Parent and Merger Sub-Owned Shares. Each Share that is owned, directly or indirectly, by Parent or Merger Sub immediately prior to the Effective Time, if any, or held by the Company immediately prior to the Effective Time (in each case, other than any such Shares held on behalf of third parties) (the "Cancelled Shares") shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange for such cancellation and retirement.

(c) Conversion of Merger Sub Common Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of common stock, par value \$0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Surviving Corporation and shall with the Remaining Shares constitute the only outstanding shares of capital stock of the Surviving Corporation. From and after the Effective Time, all certificates representing the common stock of Merger Sub shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Corporation into which they were converted in accordance with the immediately preceding sentence.

(d) Adjustments. If at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company, or securities convertible or exchangeable into or exercisable for shares of capital stock, shall occur as a result of any reclassification, recapitalization, stock split (including a reverse stock split) or subdivision or combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period (excluding, in each case, normal quarterly cash dividends), merger or other similar transaction, the Merger Consideration shall be equitably adjusted to reflect such change; provided that nothing herein shall be construed to permit the Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

(e) Dissenters' Rights. Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and which are held by a stockholder who did not vote in favor of the Merger (or consent thereto in writing) and who is entitled to demand and properly demands appraisal of such shares pursuant to, and who complies in all respects with, the provisions of Section 17-6712 of the KGCC (the "Dissenting Stockholders"), shall not be converted into or be exchangeable for the right to receive the Merger Consideration (the "Dissenting Shares," and together with the Cancelled Shares, the "Excluded Shares"), but instead such holder shall be entitled to payment of the appraised value of such shares in accordance with the provisions of Section 17-6712 of the KGCC (and at the Effective Time, such Dissenting Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and such holder shall cease to have any rights with respect thereto, except the right to receive the appraised value of such Dissenting Shares in accordance with the provisions of Section 17-6712 of the KGCC), unless and until such holder shall have failed to perfect or shall have effectively withdrawn or lost rights to appraisal under the KGCC. If any Dissenting Stockholder shall have failed to perfect or shall have effectively withdrawn or lost such right, such holder's shares of Company Common Stock shall thereupon be treated as if they had been converted into and become exchangeable for the right to receive, as of the Effective Time, the Merger Consideration for each such share of Company Common Stock, in accordance with Section 2.1(a), without any interest thereon. The Company shall give Parent (i) prompt notice of any written demands for appraisal of any shares of Company Common Stock, attempted withdrawals of such demands and any other instruments served pursuant to the KGCC and received by the Company relating to stockholders' rights of appraisal and (ii) the opportunity to participate in negotiations and proceedings with respect to demands for appraisal under the KGCC. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to, or settle, or offer or agree to settle, any such demand for payment. Any portion of the Merger Consideration made available to the Paying Agent pursuant to Section 2.2 to pay for shares of Company Common Stock for which appraisal rights have been perfected shall be returned to Parent upon demand.

Section 2.2 Exchange of Certificates.

(a) Paying Agent. At or prior to the Effective Time, Parent shall deposit, or shall cause to be deposited, with a U.S. bank or trust company that shall be appointed by Parent and approved by the Company in writing (such approval not to be unreasonably withheld) to act as a paying agent hereunder (the "Paying Agent"), in trust for the benefit of holders of the Shares, the Company Stock Options (as hereinafter defined) and the Company Stock-Based Awards (as hereinafter defined), cash in U.S. dollars sufficient to pay (i) the aggregate Merger Consideration in exchange for all of the Shares outstanding immediately prior to the Effective Time (other than the Excluded Shares and the Remaining Shares) pursuant to the provisions of this ARTICLE II and (ii) the Option and Stock-Based Consideration (as hereinafter defined) payable pursuant to Section 5.5 (such cash referred to in subsections (a)(i) and (a)(ii) being hereinafter referred to as the "Exchange Fund").

(b) Payment Procedures.

(i) As soon as reasonably practicable after the Effective Time and in any event not later than the fifth Business Day following the Effective Time, the Paying Agent shall mail (x) to each holder of record of Shares whose Shares were converted into the Merger Consideration pursuant to Section 2.1, (A) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the certificates that immediately prior to the Effective Time represented Shares ("Certificates") shall pass, only upon delivery of Certificates (to the Paying Agent and shall be in such form and have such other provisions as Parent and the Company may reasonably determine prior to the Effective Time) and (B) instructions for use in effecting the surrender of Certificates (or effective affidavits of loss in lieu thereof) or non-certificated Shares represented by book-entry ("Book-Entry Shares") in exchange for the Merger Consideration and (y) to each holder of a Company Stock Option or a Company Stock-Based Award, a check in an amount due and payable to such holder pursuant to Section 5.5 hereof in respect of such Company Stock Option or Company Stock-Based Award.

(ii) Upon surrender of Certificates (or effective affidavits of loss in lieu thereof) or Book-Entry Shares to the Paying Agent together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may customarily be required by the Paying Agent, the holder of such Certificates or Book-Entry Shares shall be entitled to receive in exchange therefor a check in an amount equal to the product of (x) the number of Shares represented by such holder's properly surrendered Certificates (or effective affidavits of loss in lieu thereof) and Book-Entry Shares multiplied by (y) the Merger Consideration. No interest will be paid or accrued on any amount payable upon due surrender of Certificates or Book-Entry Shares. In the event of a transfer of ownership of Shares that is not registered in the transfer or stock records of the Company, a check for any cash to be paid upon due surrender of the Certificate formerly representing such Shares may be paid to such a transferee if such Certificate is presented to the Paying Agent, accompanied by all documents required to evidence and effect such transfer and to evidence that any applicable stock transfer or other Taxes (as hereinafter defined) have been paid or are not applicable.

(iii) The Surviving Corporation, Parent and the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable under this Agreement to any holder of Shares or holder of Company Stock Options or Company Stock-Based Awards, such amounts as are required to be withheld or deducted under the Internal Revenue Code of 1986, as amended (the "Code"), or any provision of U.S. state, local or foreign Tax Law with respect to the making of such payment. To the extent that amounts are so withheld or deducted and paid over to the applicable Governmental Entity (as hereinafter defined), such withheld or deducted amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Shares or holder of the Company Stock Options or Company Stock-Based Awards, in respect of which such deduction and withholding were made.

(c) Closing of Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or Parent for transfer, they shall be cancelled and exchanged for a check in the proper amount pursuant to and subject to the requirements of this ARTICLE II.

(d) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments thereof) that remains undistributed to the former holders of Shares for one year after the Effective Time shall be delivered to the Surviving Corporation upon demand, and any former holders of Shares who have not surrendered their Shares in accordance with this Section 2.2 shall thereafter look only to the Surviving Corporation for payment of their claim for the Merger Consideration, without any interest thereon, upon due surrender of their Shares.

(e) No Liability. Notwithstanding anything herein to the contrary, none of the Company, Parent, Merger Sub, the Surviving Corporation, the Paying Agent or any other person shall be liable to any former holder of Shares for any amount properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(f) Investment of Exchange Fund. The Paying Agent shall invest all cash included in the Exchange Fund as reasonably directed by Parent; provided, however, that any investment of such cash shall be limited to direct short-term obligations of, or short-term obligations fully guaranteed as to principal and interest by, the U.S. government and that no such investment or loss thereon shall affect the amounts payable to holders of Certificates or Book-Entry Shares pursuant to this ARTICLE II. Any interest and other income resulting from such investments shall be paid to the Surviving Corporation pursuant to Section 2.2(d).

(g) Lost Certificates. In the case of any Certificate that has been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Paying Agent, the posting by such person of an indemnity agreement or, at the election of Parent or the Paying Agent, a bond in customary amount as indemnity against any claim that may be made against it with respect to such Certificate, the Paying Agent will issue in exchange for such lost, stolen or destroyed Certificate a check in the amount of the number of Shares represented by such lost, stolen or destroyed Certificate multiplied by the Merger Consideration.

Section 2.3 Timing of Equity Rollover. For the avoidance of doubt, the parties acknowledge and agree that the contribution of Shares to Parent or one of its Subsidiaries pursuant to the Rollover Commitments (and any subsequent contribution of such Shares prior to the Effective Time by Parent to one or more of its Subsidiaries) shall be deemed to occur immediately prior to the Effective Time and prior to any other above-described event.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (i) as disclosed in the Company SEC Documents filed on or after December 31, 2005 and prior to the date of this Agreement (excluding any disclosures set forth in any risk factor section thereof, in any section relating to forward looking statements and any other disclosures included therein to the extent that they are cautionary, predictive or forward looking in nature) or (ii) as disclosed in the disclosure letter delivered by the Company to Parent immediately prior to the execution of this Agreement (the "Company Disclosure Letter", it being agreed that disclosure of any item in any section of the Company Disclosure Letter shall also be deemed disclosure with respect to any other section of this Agreement to which the relevance of such item is reasonably apparent on its face), the Company represents and warrants to Parent and Merger Sub as follows:

Section 3.1 Qualification, Organization, Subsidiaries, etc.

(a) Each of the Company and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization. Each of the Company and its Subsidiaries and the Company Joint Ventures has all requisite corporate, partnership or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, except where the failure to have such power or authority would not, individually or in the aggregate, have a Company Material Adverse Effect.

(b) Each of the Company and its Subsidiaries is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Company Material Adverse Effect. The organizational or governing documents of the Company and each of its Subsidiaries and Company Joint Ventures, as previously provided to Parent, are in full force and effect. Neither the Company nor any Subsidiary nor, to the Company's Knowledge, any Company Joint Venture, is in violation of its organizational or governing documents.

(c) As used in this Agreement, any reference to any fact, circumstance, event, change, effect or occurrence having a "Company Material Adverse Effect" means (a) any fact, circumstance, event, change, effect or occurrence (including those affecting or relating to any Company Joint Venture) that, individually or in the aggregate with all other facts, circumstances, events, changes, effects or occurrences, has or would be reasonably likely to have a material adverse effect on the assets, properties, business, results of operation or financial condition of the Company and its Subsidiaries and the Company Joint Ventures, taken as a whole (but with respect to the Company's direct or indirect interests in any non-wholly owned entities only to the extent of such effects on the Company's direct or indirect interests therein), or that would be reasonably likely to prevent or materially delay or materially impair the ability of the Company to perform its obligations hereunder or to consummate the Merger or the other transactions contemplated hereby, or (b) without limiting the foregoing, a Partnership Event, but, in any case, shall not include facts, circumstances, events, changes, effects or occurrences (i) generally affecting the energy transportation, energy storage, oil and gas, terminals, natural gas distribution or retail, or electric power industries in the United States or Canada (including general pricing changes) or the economy or the financial or securities markets in the United States or elsewhere in the world, including any regulatory and political conditions or developments, or any outbreak or escalation of hostilities, declared or undeclared acts of war or terrorism, except to the extent any fact, circumstance, event, change, effect or occurrence that, relative to other industry participants, disproportionately impacts the assets, properties, business, results of operation or financial condition of the Company and its Subsidiaries and the Company Joint Ventures, taken as a whole (but with respect to the Company's direct or indirect interests in any non-wholly owned entities only to the extent of such effects on the Company's direct or indirect interests therein), or (ii) resulting from the announcement of (A) the proposal of the Merger or (B) this Agreement and the transactions contemplated hereby.

Section 3.2 Capital Stock.

(a) The authorized capital stock of the Company consists of 300,000,000 shares of Company Common Stock, 200,000 shares of Class A Preferred Stock, no par value ("Company Class A Preferred Stock"), and 2,000,000 shares of Class B Preferred Stock, no par value ("Company Class B Preferred Stock" and together with the Company Class A Preferred Stock, "Company Preferred Stock"). As of August 23, 2006, (i) 133,947,769 shares of Company Common Stock were issued and outstanding, (ii) 15,016,901 shares of Company Common Stock were held in treasury, (iii)(A) 353,000 shares of Company Common Stock were reserved for issuance under the Company's Amended and Restated 1992 Stock Option Plan for Non-Employee Directors, of which 353,000 shares of Company Common Stock were subject to outstanding options issued pursuant to such plan, (B) 663,553 shares of Company Common Stock were reserved for issuance under the Company's 1994 Amended and Restated Long-term Incentive Plan, of which 663,553 shares of Company Common Stock were subject to outstanding options issued pursuant to such plan, (C) 4,361,224 shares of Company Common Stock were reserved for issuance under the Company's Amended and Restated 1999 Stock Plan, of which 1,909,817 shares of Company Common Stock were subject to outstanding options issued pursuant to such plan, (D) 466,650 shares of Company Common Stock were reserved for issuance under the Company's Non-Employee Directors Stock Awards Plan, (E) 636,418 shares of Company Common Stock were reserved for issuance under the Company's Employees Stock Purchase Plan, and (F) 999,254 shares of Company Common Stock were reserved for issuance under the Company's Foreign Subsidiary Employees Stock Purchase Plan, and (iv) no shares of Company Preferred Stock were issued or outstanding. All outstanding shares of Company Common Stock, and all shares of Company Common Stock reserved for issuance as noted in clause (iii), when issued in accordance with the respective terms thereof, are or will be duly authorized, validly issued, fully paid and non-assessable and free of pre-emptive rights and issued in compliance with all applicable securities Laws.

(b) Except as set forth in subsection (a) above, as of the date hereof, (i) the Company does not have any shares of its capital stock issued or outstanding other than shares of Company Common Stock that have become outstanding after August 23, 2006 upon exercise of Company Stock Options outstanding as of August 23, 2006 and (ii) there are no outstanding subscriptions, options, warrants, calls, convertible securities or other similar rights, agreements or commitments relating to the issuance of capital stock or other equity interests to which the Company or any of its Subsidiaries or, to the Company's Knowledge, any of the Company Joint Ventures is a party obligating the Company or any of its Subsidiaries or, to the Company's Knowledge, any of the Company Joint Ventures to (A) issue, transfer or sell any shares of capital stock or other equity interests of the Company or any of its Subsidiaries or any of the Company Joint Ventures or securities convertible into or exchangeable for such shares or equity interests, (B) grant, extend or enter into any such subscription, option, warrant, call, convertible securities or other similar right, agreement or arrangement, (C) redeem or otherwise acquire any such shares of capital stock or other equity interests or (D) provide a material amount of funds to, or make any material investment (in the form of a loan, capital contribution or otherwise) in, any Subsidiary or Company Joint Venture.

(c) Except for the awards to acquire shares of Company Common Stock under the Company Stock Plans and Stock Purchase Plans listed in Section 3.2(a) above, neither the Company nor any of its Subsidiaries has outstanding bonds, debentures, notes or other obligations, the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter.

(d) There are no stockholder agreements, voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries or, to the Company's Knowledge, any Company Joint Venture is a party with respect to the voting of the capital stock or other equity interest of the Company or any of its Subsidiaries or, to the Company's Knowledge, any Company Joint Venture.

(e) No holder of securities in the Company or any of its Subsidiaries or, to the Company's Knowledge, any Company Joint Venture has any right to have such securities registered by the Company or any of its Subsidiaries or, to the Company's Knowledge, any Company Joint Ventures, as the case may be.

Section 3.3 Subsidiaries and Company Joint Ventures.

(a) Section 3.3 of the Company Disclosure Letter sets forth a complete and correct list of each "significant subsidiary" of the Company as such term is defined in Regulation S-X promulgated by the SEC (each, a "Significant Subsidiary"). Section 3.3 of the Company Disclosure Letter also sets forth the jurisdiction of organization and percentage of outstanding equity interests (including partnership interests and limited liability company interests) owned by the Company or its Subsidiaries of each Significant Subsidiary and each Company Joint Venture. All equity interests (including partnership interests and limited liability company interests) of the Company's Significant Subsidiaries and, to the Company's Knowledge, the Company Joint Ventures held by the Company or any other Subsidiary have been duly and validly authorized and are validly issued, fully paid and non-assessable and were not issued in violation of any preemptive or similar rights, purchase option, call or right of first refusal or similar rights. All such equity interests owned by the Company or its Subsidiaries are free and clear of any Liens, other than restrictions imposed by applicable Law.

(b) The Company, or a wholly owned Subsidiary of the Company, owns all the outstanding shares of capital stock of KMGP. KMGP is the sole general partner of Kinder Morgan Energy Partners, L.P. KMGP owns a general partner interest in Kinder Morgan Energy Partners, L.P., and such general partner interest is duly authorized by the Partnership Agreement and was validly issued to or acquired by KMGP. KMGP owns such general partner interest free and clear of all Liens, other than restrictions imposed by applicable Law or Liens permissible under any applicable loan agreements and indentures. As of August 23, 2006, the Company owns, directly or indirectly, 14,355,735 Common Units (as defined in the Partnership Agreement), 5,313,400 Class B Units (as defined in the Partnership Agreement), approximately 9,484,943 listed shares representing limited liability company interests of Kinder Morgan Management, LLC, and all of the voting shares (as defined in the LLC Agreement) of Kinder Morgan Management, LLC, all of which are duly authorized by the Partnership Agreement or the LLC Agreement, as applicable, and were validly issued to or acquired by the Company or its direct or indirect wholly owned Subsidiaries, and are fully paid and non-assessable. The Company or such wholly owned Subsidiaries (other than KMP and KMR) own such Common Units and Class B Units and listed shares and voting shares free and clear of all Liens, other than restrictions imposed by applicable Law.

Section 3.4 Corporate Authority Relative to This Agreement; No Violation.

(a) The Company has the requisite corporate power and authority to enter into this Agreement and, subject to receipt of the Company Stockholder Approval (as hereinafter defined), to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of the Company, acting upon the unanimous recommendation of the Special Committee, and, except for (i) the Company Stockholder Approval and (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Kansas, no other corporate proceedings on the part of the Company are necessary to authorize the consummation of the transactions contemplated hereby. As of the date hereof, each of the Board of Directors of the Company (with 3 directors abstaining) and the Special Committee of the Board of Directors has unanimously resolved to recommend that the Company's stockholders approve this Agreement and the transactions contemplated hereby (including the Special Committee's recommendation, the "Recommendation"). This Agreement has been duly and validly executed and delivered by the Company and, assuming this Agreement constitutes the valid and binding agreement of Parent and Merger Sub, constitutes the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and any implied covenant of good faith and fair dealing.

(b) Other than in connection with or in compliance with (i) the KGCC, (ii) the Securities Exchange Act of 1934 (the "Exchange Act"), (iii) the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act"), (iv) the Competition Act (Canada) and (v) the approvals set forth on Section 3.4(b) of the Company Disclosure Letter (collectively, the "Company Approvals"), no authorization, consent or approval of, or filing with, any United States or foreign governmental or regulatory agency, commission, court, body, entity or authority (each, a "Governmental Entity") is necessary, under applicable Law, for the consummation by the Company of the transactions contemplated hereby, except for such authorizations, consents, approvals or filings that, if not obtained or made, would not have, individually or in the aggregate, a Company Material Adverse Effect.

(c) The execution and delivery by the Company of this Agreement does not, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof by the Company will not, (i) result in any violation of, or default (with or without notice or lapse of time, or both) under, require consent under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of any benefit under any loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture, lease, agreement, contract, instrument, permit, Company Permit, concession, franchise, right or license binding upon the Company or any of its Subsidiaries or, to the Company's Knowledge, the Company Joint Ventures or result in the creation of any liens, claims, mortgages, encumbrances, pledges, security interests, equities or charges of any kind (each, a "Lien") upon any of the properties or assets of the Company or any of its Subsidiaries or, to the Company's Knowledge, the Company Joint Ventures, (ii) conflict with or result in any violation of any provision of the articles of incorporation or by-laws or other equivalent organizational document, in each case as amended, of the Company or any of its Subsidiaries or, to the Company's Knowledge, the Company Joint Ventures or (iii) assuming that the consents and approvals referred to in Section 3.4(b) are duly obtained, conflict with or violate any applicable Laws, other than, in the case of clauses (i) and (iii), any such violation, required consent, conflict, default, termination, cancellation, acceleration, right, loss or Lien that would not have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.5 Reports and Financial Statements.

(a) The Company and its Subsidiaries have filed all forms, documents, statements and reports required to be filed prior to the date hereof by them with the Securities and Exchange Commission (the "SEC") since January 1, 2004 (the forms, documents, statements and reports filed with the SEC since January 1, 2003 and those filed with the SEC subsequent to the date of this Agreement, if any, including any amendments thereto) (the "Company SEC Documents"). As of their respective dates, or, if amended, as of the date of the last such amendment prior to the date hereof, the Company SEC Documents complied, and each of the Company SEC Documents filed subsequent to the date of this Agreement will comply, in all material respects with the requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder. None of the Company SEC Documents so filed or that will be filed subsequent to the date of this Agreement contained or will contain, as the case may be, any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to in order make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The Company and its Subsidiaries have filed all forms, documents, statements and reports required to be filed prior to the date hereof by them with the securities regulatory authorities of each applicable province of Canada (the "CSA") on the SEDAR system since January 1, 2004 (the forms, documents, statements and reports filed with the CSA since January 1, 2003 and those filed with the CSA subsequent to the date of this Agreement, if any, including any amendments thereto) (the "Company CSA Documents"). As of their respective dates, or, if amended, as of the date of the last such amendment prior to the date hereof, the Company CSA Documents complied, and each of the Company CSA Documents filed subsequent to the date of this Agreement will comply, in all material respects with the requirements of the securities Laws of each applicable province of Canada, as the case may be, and the applicable rules and regulations promulgated thereunder. None of the Company CSA Documents so filed or that will be filed subsequent to the date of this Agreement contained or will contain, as the case may be, any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(c) The financial statements (including all related notes and schedules) of the Company and its Subsidiaries (such financial statements being consolidated to the extent applicable) included in the Company SEC Documents fairly present in all material respects the financial position of the Company and its Subsidiaries, as at the respective dates thereof, and the results of their operations and their cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) in conformity with United States generally accepted accounting principles ("GAAP") (except, in the case of the unaudited statements or foreign Subsidiaries, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto).

Section 3.6 Internal Controls and Procedures. The Company, Kinder Morgan Energy Partners, L.P., and Kinder Morgan Management, LLC have established and maintain disclosure controls and procedures and internal control over financial reporting (as such terms are defined in paragraphs (e) and (f), respectively, of Rule 13a-15 under the Exchange Act) as required by Rule 13a-15 under the Exchange Act. The Company's, Kinder Morgan Energy Partners, L.P.'s, and Kinder Morgan Management, LLC's disclosure controls and procedures are reasonably designed to ensure that all material information required to be disclosed by the Company, Kinder Morgan Energy Partners, L.P., and Kinder Morgan Management, LLC in the reports that it or they file under the Exchange Act are recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that all such material information is accumulated and communicated to the management of the Company, Kinder Morgan Energy Partners, L.P., and Kinder Morgan Management, LLC as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002, as amended, and the rules and regulations promulgated thereunder (the "Sarbanes-Oxley Act"). The management of the Company, Kinder Morgan Energy Partners, L.P., and Kinder Morgan Management, LLC have completed their assessment of the effectiveness of the Company's, Kinder Morgan Energy Partners, L.P.'s, and Kinder Morgan Management, LLC's respective internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the year ended December 31, 2005, and such assessment concluded that such controls were effective. The Company, Kinder Morgan Energy Partners, L.P., and Kinder Morgan Management, LLC have disclosed, based on their most recent evaluations, to the Company's, Kinder Morgan Energy Partners, L.P.'s, and Kinder Morgan Management, LLC's respective outside auditors and the audit committee of the respective boards of directors of the Company, Kinder Morgan Energy Partners, L.P., and Kinder Morgan Management, LLC (A) all significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) which are reasonably likely to adversely affect in any material respect the Company's, Kinder Morgan Energy Partners, L.P.'s, and Kinder Morgan Management, LLC's ability to record, process, summarize and report financial data and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's, Kinder Morgan Energy Partners, L.P.'s, or Kinder Morgan Management, LLC's internal controls over financial reporting.

Section 3.7 No Undisclosed Liabilities. Except (i) as reflected or reserved against in the Company's consolidated balance sheets (or the notes thereto) included in the Company SEC Documents filed prior to the date hereof, (ii) for transactions contemplated by this Agreement, (iii) for liabilities and obligations incurred in the ordinary course of business consistent with past practice since December 31, 2005 and (iv) for liabilities or obligations which have been discharged or paid in full in the ordinary course of business, neither the Company nor any Subsidiary of the Company nor, to the Company's Knowledge, any Company Joint Venture has any liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, whether known or unknown and whether due or to become due, that would, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.8 Compliance with Law; Permits.

(a) The Company and its Subsidiaries and, to the Company's Knowledge, the Company Joint Ventures are, and since the later of December 31, 2004 and their respective dates of formation or organization have been, in compliance with and are not in default under or in violation of any applicable federal, state, local or foreign or provincial law, statute, ordinance, rule, regulation, judgment, order, injunction, decree or agency requirement of or undertaking to or agreement with any Governmental Entity, including common law, (collectively, "Laws" and each, a "Law"), except where such non-compliance, default or violation would not have, individually or in the aggregate, a Company Material Adverse Effect.

(b) The Company and its Subsidiaries and to the Company's Knowledge, the Company Joint Ventures are in possession of all franchises, tariffs, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for the Company and its Subsidiaries and to the Company's Knowledge, the Company Joint Ventures to own, lease and operate their properties and assets or to carry on their businesses as they are now being conducted (the "Company Permits"), except where the failure to have any of the Company Permits would not have, individually or in the aggregate, a Company Material Adverse Effect. All Company Permits are in full force and effect, except where the failure to be in full force and effect would not have, individually or in the aggregate, a Company Material Adverse Effect. No suspension or cancellation of any of the Company Permits is pending or, to the Knowledge of the Company, threatened, except where such suspension or cancellation would not, individually or in the aggregate, have a Company Material Adverse Effect. The Company and its Subsidiaries and to the Company's Knowledge, the Company Joint Ventures are not, and since December 31, 2004 have not been, in violation or breach of, or default under, any Company Permit, except where such violation, breach or default would not, individually or in the aggregate, have a Company Material Adverse Effect. As of the date of this Agreement, to the Knowledge of the Company, no event or condition has occurred or exists which would result in a violation of, breach, default or loss of a benefit under, or acceleration of an obligation of the Company or any of its Subsidiaries under, any Company Permit (in each case, with or without notice or lapse of time or both), except for violations, breaches, defaults, losses or accelerations that would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.9 Environmental Laws and Regulations.

(a) Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, (i) the Company and each of its Subsidiaries and, to the Company's Knowledge, each of its Company Joint Ventures have conducted their respective businesses in compliance with all applicable Environmental Laws (as hereinafter defined), (ii) there has been no release of any Hazardous Substance by the Company or any of its Subsidiaries or, to the Company's Knowledge, any of its Company Joint Ventures in any manner that could reasonably be expected to give rise to any remedial obligation or corrective action requirement under applicable Environmental Laws, (iii) since December 31, 2005 until the date of this Agreement, neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, any of its Company Joint Ventures has received in writing any notices, demand letters or requests for information from any federal, state, local or foreign or provincial Governmental Entity asserting that the Company or any of its Subsidiaries or, to the Company's Knowledge, any of its Company Joint Ventures may be in violation of, or liable under, any Environmental Law, (iv) to the Company's Knowledge no Hazardous Substance has been disposed of, released or transported in violation of any applicable Environmental Law, or in a manner giving rise to any liability under Environmental Law, from any properties while owned or operated by the Company or any of its Subsidiaries or, to the Company's Knowledge, any of its Company Joint Ventures or as a result of any operations or activities of the Company or any of its Subsidiaries or, to the Company's Knowledge, any of its Company Joint Ventures and (v) neither the Company, its Subsidiaries, to the Company's Knowledge, its Company Joint Ventures nor any of their respective properties are, or, to the Knowledge of the Company, threatened to become, subject to any liabilities relating to any suit, settlement, court order, administrative order, regulatory requirement, judgment or written claim asserted or arising under any Environmental Law or any agreement relating to environmental liabilities. This Section 3.9 (together with Sections 3.7, 3.12 and 3.13) shall be deemed to contain the only representations and warranties in this Agreement with respect to Environmental Laws, Hazardous Substances and any other environmental matter.

(b) As used herein, "Environmental Law" means any Law relating to (i) the protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (ii) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances, in each case as in effect at the date hereof.

(c) As used herein, "Hazardous Substance" means any substance listed, defined, designated, classified or regulated as hazardous, toxic, radioactive or dangerous under any Environmental Law. Hazardous Substance includes any substance to which exposure is regulated by any Governmental Entity or any Environmental Law as a toxic waste, pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, special waste or petroleum or any derivative or byproduct thereof, radon, radioactive material, asbestos or asbestos containing material, urea formaldehyde, foam insulation or polychlorinated biphenyls.

Section 3.10 Employee Benefit Plans.

(a) Section 3.10(a) of the Company Disclosure Letter lists all material Company Benefit Plans. “Company Benefit Plans” means all compensation or employee benefit plans, programs, policies, agreements or other arrangements, whether or not “employee benefit plans” (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), whether or not subject to ERISA), providing cash- or equity-based incentives, health, medical, dental, disability, accident or life insurance benefits or vacation, severance, retirement, pension or savings benefits, that are sponsored, maintained or contributed to by the Company or any of its Subsidiaries for the benefit of current or former employees, directors or consultants of the Company or its Subsidiaries and all employee agreements providing compensation, vacation, severance or other benefits to any current or former officer, employee or consultant of the Company or its Subsidiaries.

(b) Except for such claims which would not have, individually or in the aggregate, a Company Material Adverse Effect, no material action, dispute, suit, claim, arbitration, or legal, administrative or other proceeding or governmental action (other than claims for benefits in the ordinary course) is pending or, to the Knowledge of the Company, threatened (x) with respect to any Company Benefit Plan (other than a “multiemployer plan” (within the meaning of Section 4001(a)(3) of ERISA) (a “Multiemployer Plan”)) by any current or former employee, officer or director of the Company or any of its Subsidiaries, (y) alleging any breach of the material terms of any Company Benefit Plan (other than a Multiemployer Plan) or any fiduciary duties or (z) with respect to any violation of any applicable law with respect to such Company Benefit Plan (other than a Multiemployer Plan).

(c) Each Company Benefit Plan (other than a Multiemployer Plan) has been maintained and administered in compliance with its terms and with applicable Law, including ERISA and the Code to the extent applicable thereto, except for such non-compliance which would not have, individually or in the aggregate, a Company Material Adverse Effect. Any Company Benefit Plan (other than a Multiemployer Plan) intended to be qualified under Section 401(a) or 401(k) of the Code has received a favorable determination letter from the United States Internal Revenue Service that has not been revoked and to the Knowledge of the Company, no fact or event has occurred since the date of such determination letter or letters from the Internal Revenue Service that would reasonably be expected to affect adversely the qualified status of any such Company Benefit Plan. Except as set forth on Section 3.10(c) of the Company Disclosure Letter, neither the Company nor any of its Subsidiaries maintains or contributes to any plan or arrangement which provides medical benefits to any employee or former employee following his retirement, except as required by applicable Law or as provided in individual agreements upon a severance event.

(d) With respect to each Company Benefit Plan (other than a Multiemployer Plan) that is subject to Title IV or Section 302 of ERISA or Section 412 or 4971 of the Code, (i) there does not exist any material accumulated funding deficiency within the meaning of Section 412 of the Code or Section 302 of ERISA, (ii) no reportable event within the meaning of Section 4043(c) of ERISA for which the 30-day notice requirement has not been waived has occurred, (iii) all material premiums to the Pension Benefit Guaranty Corporation (the "PBGC") have been timely paid in full, (iv) no material liability (other than for premiums to the PBGC) under Title IV of ERISA has been or is expected to be incurred by the Company or any of its Subsidiaries and (v) the PBGC has not instituted proceedings to terminate any such Company Benefit Plan.

(e) All material contributions, premiums and other material payments due from any of the Company or its Subsidiaries required by law or any Company Benefit Plan or applicable collective bargaining agreement have been made under any such plan to any fund, trust or account established thereunder or in connection therewith by the due date thereof; and any and all material contributions, premiums and other payments with respect to compensation or service before and through the Closing Date, or otherwise with respect to periods before and through the Closing Date, due from any of the Company or its Subsidiaries to, under or on account of each Company Benefit Plan shall have been paid prior to the Closing Date or shall have been fully reserved and provided for or accrued on the Company's financial statements.

(f) Except as set forth on Section 3.10(f)(i) of the Company Disclosure Letter, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee, consultant or officer of the Company or any of its Subsidiaries to severance pay, retention bonuses, parachute payments, non-competition payments, unemployment compensation or any other payment, except as expressly provided in this Agreement or as required by applicable Law, (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee, consultant or officer, except as expressly provided in this Agreement or (iii) result in any forgiveness of indebtedness or obligation to fund benefits with respect to any such employee, director or officer. Except as set forth on Section 3.10(f)(ii) of the Company Disclosure Letter, no director, officer, employee or service provider is entitled to a gross-up, make whole or other payment as a result of the imposition of taxes under Section 280G or 4999 of the Code pursuant to any agreement or arrangement with the Company or any of its Subsidiaries.

(g) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, all Company Benefit Plans subject to the Law of any jurisdiction outside of the United States (i) have been maintained in accordance with all applicable requirements, (ii) if they are intended to qualify for special tax treatment meet all necessary requirements for such treatment, and (iii) if they are intended to be funded and/or book-reserved are funded and/or book-reserved, as appropriate, based upon reasonable actuarial assumptions and in accordance with applicable Law.

Section 3.11 Interested Party Transactions. Except for employment Contracts filed or incorporated by reference as an exhibit to a Company SEC Document filed prior to the date hereof or Company Benefit Plans, Section 3.11 of the Company Disclosure Letter sets forth a correct and complete list of the contracts or arrangements that are in existence as of the date of this Agreement under which the Company has any existing or future liabilities between the Company or any of its Subsidiaries, on the one hand, and, on the other hand, any (A) present officer or director of either the Company or any of its Subsidiaries or any person that has served as such an officer or director within the past two years (in each case other than the Company as a former director of Kinder Morgan Management, LLC or Kinder Morgan Energy Partners, L.P.) or any of such officer's or director's immediate family members, (B) record or beneficial owner of more than 5% of the Shares as of the date hereof, or (C) to the Knowledge of the Company, any Affiliate of any such officer, director or owner (other than the Company or any of its Subsidiaries or any Company Joint Venture) (each, an "Affiliate Transaction"). The Company has provided to Parent correct and complete copies of each Contract or other relevant documentation (including any amendments or modifications thereto) providing for each Affiliate Transaction.

Section 3.12 Absence of Certain Changes or Events. Since December 31, 2005, (a) except as otherwise required or expressly contemplated by this Agreement, the businesses of the Company and its Subsidiaries and, to the Company's Knowledge, the Company Joint Ventures have been conducted, in all material respects, in the ordinary course of business consistent with past practice and there have not been any facts, circumstances, events, changes, effects or occurrences that have had or would have, individually or in the aggregate, a Company Material Adverse Effect and (b) prior to the date hereof, neither the Company nor any of its Subsidiaries (other than KMP or KMR, or KMGP when acting in any capacity on behalf or with respect to KMP or KMR) has taken or permitted to occur any action that were it to be taken from and after the date hereof would require approval of Parent pursuant to clauses (i), (ii), (xi), (xiii), (xvi) or (xviii) of Section 5.1(b).

Section 3.13 Investigations; Litigation. There are no (i) investigations or proceedings pending (or, to the Knowledge of the Company, threatened) by any Governmental Entity with respect to the Company or any of its Subsidiaries, or to the Company's Knowledge, any of the Company Joint Ventures or (ii) actions, suits or proceedings pending (or, to the Knowledge of the Company, threatened) against or affecting the Company or any of its Subsidiaries, or to the Company's Knowledge, any of the Company Joint Ventures, or any of their respective properties at law or in equity before, and there are no orders, judgments or decrees of any Governmental Entity against the Company or any of its Subsidiaries or, to the Company's Knowledge, any Company Joint Venture, in each case of clause (i) or (ii), which would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.14 Proxy Statement; Other Information. The Proxy Statement (as hereinafter defined) will not at the time of the mailing of the Proxy Statement to the stockholders of the Company, at the time of the Company Meeting, and at the time of any amendments thereof or supplements thereto, and the information supplied or to be supplied by the Company for inclusion or incorporation by reference in the Schedule 13E-3 (as hereinafter defined) to be filed with the SEC concurrently with the filing of the Proxy Statement, will not, at the time of its filing with the SEC, and at the time of any amendments thereof or supplements thereto, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, that no representation is made by the Company with respect to information supplied by or related to Parent. The Proxy Statement and the Schedule 13E-3 will comply as to form in all material respects with the Exchange Act, except that no representation is made by the Company with respect to information supplied by or related to Parent. The letter to stockholders, notice of meeting, proxy statement and forms of proxy to be distributed to stockholders in connection with the Merger to be filed with the SEC and the CSA in connection with seeking the adoption and approval of this Agreement are collectively referred to herein as the "Proxy Statement." The Rule 13E-3 Transaction Statement on Schedule 13E-3 to be filed with the SEC in connection with seeking the adoption and approval of this Agreement is referred to herein as the "Schedule 13E-3."

Section 3.15 Tax Matters.

(a) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and each of its Subsidiaries have prepared and timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them and all such Tax Returns are complete and accurate, (ii) the Company and each of its Subsidiaries have timely paid all Taxes that are required to be paid by any of them (whether or not shown on any Tax Return), except with respect to matters contested in good faith and for which adequate reserves have been established on the financial statements of the Company and its Subsidiaries in accordance with GAAP, (iii) the U.S. consolidated federal income Tax Returns of the Company through the tax year ending 2003 have been examined or are currently being examined by the Internal Revenue Service (or the period for assessment of the Taxes in respect of which such Tax Returns were required to be filed has expired), (iv) all assessments for Taxes due with respect to completed and settled examinations or any concluded litigation have been fully paid, (v) there are no audits, examinations, investigations or other proceedings pending or threatened in writing in respect of Taxes or Tax matters of the Company or any of its Subsidiaries, (vi) there are no Liens for Taxes on any of the assets of the Company or any of its Subsidiaries other than statutory Liens for Taxes not yet due and payable or Liens for Taxes that are being contested in good faith and for which adequate reserves have been established on the financial statements of the Company and its Subsidiaries in accordance with GAAP, (vii) none of the Company or any of its Subsidiaries has been a "controlled corporation" or a "distributing corporation" in any distribution that was purported or intended to be governed by Section 355 of the Code (or any similar provision of state, local or foreign Law) (A) occurring during the two-year period ending on the date hereof, or (B) that otherwise constitutes part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) that includes the Merger, (viii) the Company and each of its Subsidiaries has timely withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor, independent contractor, shareholder or other third party and is in compliance with all applicable rules and regulations regarding the solicitation, collection and maintenance of any forms, certifications and other information required in connection therewith, (ix) none of the Company or any of its Subsidiaries has been a party to any "reportable transaction" within the meaning of Treasury Regulation Section 1.6011-4(b) (1), (x) neither the Company nor any of its Subsidiaries is a party to any agreement or arrangement relating to the apportionment, sharing, assignment or allocation of any material Tax or material Tax asset (other than an agreement or arrangement solely among members of a group the common parent of which is the Company) or has any liability for Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulation Section 1.1502-6 (or any predecessor or successor thereof or any analogous or similar provision of Law), by contract, agreement or otherwise, (xi) no waivers or extensions of any statute of limitations have been granted or requested with respect to any Taxes of the Company or any of its Subsidiaries and (xii) Kinder Morgan Energy Partners, L.P. qualifies as a "publicly traded partnership" within the meaning of Section 7704(b) of the Code and has met, and continues to meet the "gross income requirements" (within the meaning of Section 7704(c) of the Code) in each Tax year since its formation up to and including the current Tax year.

(b) As used in this Agreement, (i) "Tax" or "Taxes" means (A) any and all federal, state, local or foreign or provincial taxes, charges, fees, imposts, levies or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, including any and all interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Entity in connection with respect thereto, and (B) any liability in respect of any items described in clause (A) payable by reason of contract, assumption, transferee liability, operation of Law, Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof of any analogous or similar provision of Law) or otherwise, and (ii) "Tax Return" means any return, report or similar filing (including any attached schedules, supplements and additional or supporting material) filed or required to be filed with respect to Taxes, including any information return, claim for refund, amended return or declaration of estimated Taxes (and including any amendments with respect thereto).

Section 3.16 Labor Matters. Except for such matters which would not have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries has received written notice during the past two years of the intent of any Governmental Entity responsible for the enforcement of labor, employment, occupational health and safety or workplace safety and insurance/workers compensation laws to conduct an investigation of the Company or any of its Subsidiaries and, to the Knowledge of the Company, no such investigation is in progress. Except for such matters which would not have, individually or in the aggregate, a Company Material Adverse Effect, (i) there are no (and have not been during the two year period preceding the date hereof) strikes or lockouts with respect to any employees of the Company or any of its Subsidiaries ("Employees"), (ii) to the Knowledge of the Company, there is no (and has not been during the two year period preceding the date hereof) union organizing effort pending or threatened against the Company or any of its Subsidiaries, (iii) there is no (and has not been during the two year period preceding the date hereof) unfair labor practice, labor dispute (other than routine individual grievances) or labor arbitration proceeding pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries and (iv) there is no (and has not been during the two year period preceding the date hereof) slowdown, or work stoppage in effect or, to the Knowledge of the Company, threatened with respect to Employees. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries has any liabilities under the Worker Adjustment and Retraining Act of 1998 (the "WARN Act") as a result of any action taken by the Company that would have, individually or in the aggregate, a Company Material Adverse Effect. Except for such non-compliance which would not have, individually or in the aggregate, a Company Material Adverse Effect, the Company and each of its Subsidiaries is in compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety and health (including, without limitation, classifications of service providers as employees and/or independent contractors).

Section 3.17 Intellectual Property. Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, either the Company or a Subsidiary of the Company or, to the Company's Knowledge, a Company Joint Venture owns, or is licensed or otherwise possesses adequate rights to use, all material trademarks, trade names, service marks, service names, mark registrations, logos, assumed names, registered and unregistered copyrights, patents or applications and registrations used in their respective businesses as currently conducted (collectively, the "Intellectual Property"). Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, (i) there are no pending or, to the Knowledge of the Company, threatened claims by any person alleging infringement by the Company or any of its Subsidiaries, or to the Company's Knowledge, any of the Company Joint Ventures for their use of the Intellectual Property of the Company or any of its Subsidiaries or, to the Company's Knowledge, any of the Company Joint Ventures, (ii) to the Knowledge of the Company, the conduct of the business of the Company and its Subsidiaries and the Company Joint Ventures does not infringe any intellectual property rights of any person, (iii) neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, any of the Company Joint Ventures has made any claim of a violation or infringement by others of its rights to or in connection with the Intellectual Property of the Company or any of its Subsidiaries or, to the Company's Knowledge, any of the Company Joint Ventures, and (iv) to the Knowledge of the Company, no person is infringing any Intellectual Property of the Company or any of its Subsidiaries or any of the Company Joint Ventures.

Section 3.18 Property.

(a) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, the Company or a Subsidiary of the Company or, to the Company's Knowledge, a Company Joint Venture owns and has good and indefeasible title to all of its owned real property and good title to all its personal property and has valid leasehold interests in all of its leased properties free and clear of all Liens (except in all cases for Liens permissible under any applicable loan agreements and indentures and for title exceptions, defects, encumbrances, liens, charges, restrictions, restrictive covenants and other matters, whether or not of record, which in the aggregate do not materially affect the continued use of the property for the purposes for which the property is currently being used (assuming the timely discharge of all obligations owing under or related to the owned real property, the personal property and the leased property) by the Company or a Subsidiary of the Company, or to the Company's Knowledge, a Company Joint Venture), including its leasehold interests derived from oil, gas and mineral leases or mineral interests (which constitute a portion of such real property owned or leased by any such person) sufficient to conduct their respective businesses as currently conducted. Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, all leases under which the Company or any of its Subsidiaries, or to the Company's Knowledge, any of the Company Joint Ventures lease any real or personal property (including such oil, gas and mineral leases or mineral interests) are valid and effective against the Company or any of its Subsidiaries, or to the Company's Knowledge, any of the Company Joint Ventures and, to the Company's Knowledge, the counterparties thereto, in accordance with their respective terms, and there is not, under any of such leases, any existing default by the Company or any of its Subsidiaries, or to the Company's Knowledge, any of the Company Joint Ventures or, to the Company's Knowledge, the counterparties thereto, or, to the Company's Knowledge, event which, with notice or lapse of time or both, would become a default by the Company or any of its Subsidiaries, or to the Company's Knowledge, any of the Company Joint Ventures or, to the Company's Knowledge, the counterparties thereto.

(b) The Company and its Subsidiaries and, to the Company's Knowledge, each of the Company Joint Ventures have such consents, easements, rights-of-way, permits or licenses from each person (collectively, "rights-of-way") as are sufficient to conduct their businesses in all material respects as currently conducted, except such rights-of-way that, if not obtained, would not, individually or in the aggregate, have a Company Material Adverse Effect. Except as would not, individually or in the aggregate, have a Company Material Adverse Effect, each of the Company and its Subsidiaries and, to the Company's Knowledge, each of the Company Joint Ventures has fulfilled and performed all its obligations with respect to such rights-of-way and no event has occurred that allows, or after notice or lapse of time would allow, revocation or termination thereof or would result in any impairment of the rights of the holder of any such rights-of-way, except for such revocations, terminations and impairments that do not affect the commercial use of the property for the purposes for which the property is currently being used and except for rights reserved to, or vested in, any municipality or other Governmental Entity or any railroad by the terms of any right, power, franchise, grant, license, permit, or by any other provision of any applicable Law, to terminate or to require annual or other periodic payments as a condition to the continuance of such right.

Section 3.19 Insurance. The Company and its Subsidiaries and, to the Company's Knowledge, the Company Joint Ventures maintain, or are entitled to the benefits of, insurance covering their properties, operations, personnel and businesses in the amounts set forth in Section 3.19 of the Company Disclosure Letter. Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, none of the Company or its Subsidiaries or, to the Company's Knowledge, the Company Joint Ventures has received notice from any insurer or agent of such insurer that substantial capital improvements or other expenditures will have to be made in order to continue such insurance, and all such insurance is outstanding and duly in force.

Section 3.20 Opinion of Financial Advisor. The Board of Directors of the Company and the Special Committee have received the opinion of each of Morgan Stanley & Co. Incorporated and The Blackstone Group, L.P., dated as of August 27, 2006, to the effect that, as of the date thereof, the Merger Consideration was fair to the holders of the Company Common Stock (other than those holders that are parties to a Rollover Commitment, Parent and Merger Sub) from a financial point of view.

Section 3.21 Required Vote of the Company Stockholders. The affirmative vote of the holders of outstanding shares of Company Common Stock, voting together as a single class, representing at least two-thirds of all the votes then entitled to vote at a meeting of stockholders, is the only vote of holders of securities of the Company which is required to approve this Agreement, the Merger and the other transactions contemplated hereby (the "Company Stockholder Approval").

Section 3.22 Material Contracts.

(a) Except for this Agreement, the Company Benefit Plans or as filed with the SEC prior to the date hereof, neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, the Company Joint Ventures is a party to or bound by, as of the date hereof, any Contract (whether written or oral) (i) which is a "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) to the Company or Kinder Morgan Energy Partners, L.P. or Kinder Morgan Management, LLC ; (ii) to the Company's Knowledge, which is an agreement relating to the formation of or specifying the rights of the interest holders in a Company Joint Venture; (iii) which constitutes a contract or commitment relating to indebtedness for borrowed money or the deferred purchase price of property (in either case, whether incurred, assumed, guaranteed or secured by any asset) in excess of \$10,000,000; or (iv) which contains any provision that prior to or following the Effective Time would materially restrict or alter the conduct of business of, or purport to materially restrict or alter the conduct of business of, whether or not binding on, Parent or any Affiliate of the Parent (other than the Company, any of its Subsidiaries or any director, officer or employee of any of the Company or any of its Subsidiaries) (all contracts of the type described in this Section 3.22(a) being referred to herein as "Company Material Contracts"). Neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, the Company Joint Ventures is a party to any Contract (other than any Contracts to which Parent or any Affiliate of Parent is a party) that purports to be binding on, or imputes any obligations on, Parent or any Affiliate of Parent other than (i) the Company or its Subsidiaries or (ii) any employee, officer or director of the Company or any of its Subsidiaries (in such capacity).

(b) (i) Each Company Material Contract is valid and binding on the Company and any of its Subsidiaries and, to the Company's Knowledge, the Company Joint Ventures that is a party thereto, as applicable, and in full force and effect, except where the failure to be valid, binding and in full force and effect, either individually or in the aggregate, would not have a Company Material Adverse Effect, (ii) the Company and each of its Subsidiaries and, to the Company's Knowledge, each of the Company Joint Ventures has in all material respects performed all obligations required to be performed by it to date under each Company Material Contract, except where such noncompliance, either individually or in the aggregate, would not have a Company Material Adverse Effect, and (iii) neither the Company nor any of its Subsidiaries nor, to the Company's Knowledge, any of the Company Joint Ventures has received written notice of, or to the Company's Knowledge, knows of, the existence of any event or condition which constitutes, or, after notice or lapse of time or both, will constitute, a material default on the part of the Company or any of its Subsidiaries or, to the Company's Knowledge, the Company Joint Ventures under any such Company Material Contract, except where such default, either individually or in the aggregate, would not have a Company Material Adverse Effect.

Section 3.23 Finders or Brokers. Except for Morgan Stanley & Co. Incorporated and The Blackstone Group, L.P., neither the Company nor any of its Subsidiaries has engaged any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who might be entitled to any fee or any commission in connection with or upon consummation of the Merger or the other transactions contemplated hereby.

Section 3.24 State Takeover Statutes; Charter Provisions. As of the date of this Agreement, the Company is not an "issuing public corporation" for purposes of Section 17-1286 *et seq.* of the Kansas Statutes Annotated ("KSA"), and the Board of Directors of the Company, on August 27, 2006, approved this Agreement, the Voting Agreement, the Rollover Commitments entered into on the date of this Agreement, the Merger and the other transactions contemplated thereby for purposes of Section 17-12, 100 *et seq.* of the KSA. Other than Article Seventh of the Company's Restated Articles of Incorporation, no other provision of the Company's Restated Articles of Incorporation impacts the vote required for the Merger or other transactions contemplated hereby.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as disclosed in the disclosure letter delivered by Parent to the Company immediately prior to the execution of this Agreement (the "Parent Disclosure Letter"), Parent and Merger Sub jointly and severally represent and warrant to the Company as follows:

Section 4.1 Qualification; Organization.

(a) Each of Parent and Merger Sub is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization. Each of Parent and Merger Sub has all requisite corporate, limited liability company, or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, except where the failure to have such power or authority would not, individually or in the aggregate, have a Parent Material Adverse Effect.

(b) Each of Parent and Merger Sub is qualified to do business and is in good standing as a foreign corporation or limited liability company, as applicable, in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, prevent or materially delay or materially impair the ability of Parent or Merger Sub to consummate the Merger and the other transactions contemplated hereby (a "Parent Material Adverse Effect"). The organizational or governing documents of the Parent and Merger Sub, as previously provided to the Company, are in full force and effect. Neither Parent nor Merger Sub is in violation of its organizational or governing documents.

Section 4.2 Corporate Authority Relative to This Agreement; No Violation.

(a) Each of Parent and Merger Sub has all requisite corporate or limited liability company, as applicable, power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Members of Parent and the Board of Directors of Merger Sub and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Parent and Merger Sub and, assuming this Agreement constitutes the valid and binding agreement of the Company, this Agreement constitutes the valid and binding agreement of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and any implied covenant of good faith and fair dealing.

(b) Other than in connection with or in compliance with (i) the provisions of the KGCC, (ii) the Exchange Act, (iii) the HSR Act, (iv) Competition Act (Canada) and (v) the approvals set forth on Section 4.2(b) of the Parent Disclosure Letter (collectively, the "Parent Approvals"), no authorization, consent or approval of, or filing with, any Governmental Entity is necessary for the consummation by Parent or Merger Sub of the transactions contemplated by this Agreement, except for such authorizations, consents, approvals or filings, that, if not obtained or made, would not have, individually or in the aggregate, a Parent Material Adverse Effect.

(c) The execution and delivery by Parent and Merger Sub of this Agreement does not, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof will not (i) result in any violation of, or default (with or without notice or lapse of time, or both) under, require consent under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of any benefit under any loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture, lease, agreement, contract, instrument, permit, concession, franchise, right or license binding upon Parent or any of its Subsidiaries or result in the creation of any Lien upon any of the properties or assets of Parent or any of its Subsidiaries, (ii) conflict with or result in any violation of any provision of the certificate of incorporation or by-laws or other equivalent organizational document, in each case as amended, of Parent or any of its Subsidiaries or (iii) conflict with or violate any applicable Laws, other than, in the case of clauses (i) and (iii), any such violation, conflict, default, termination, cancellation, acceleration, right, loss or Lien that would not have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 4.3 Proxy Statement; Other Information. None of the information supplied or to be supplied by Parent or Merger Sub in writing for inclusion or incorporation by reference in the Proxy Statement will at the time of the mailing of the Proxy Statement to the stockholders of the Company, at the time of the Company Meeting, and at the time of any amendments thereof or supplements thereto, and none of the information supplied or to be supplied by Parent or Merger Sub and contained in the Schedule 13E-3 to be filed with the SEC concurrently with the filing of the Proxy Statement, will, at the time of its filing with the SEC, and at the time of any amendments thereof or supplements thereto, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 4.4 Financing. Section 4.4 of the Parent Disclosure Letter sets forth true, accurate and complete copies, as of the date hereof, of (i) executed equity commitment letters to provide equity financing to Parent and/or Merger Sub, (ii) the Rollover Commitments, (iii) executed debt commitment letters and related term sheets (the "Debt Commitment Letters") and together with the equity commitment letters described in clause (i), the "Financing Commitments") pursuant to which, and subject to the terms and conditions thereof, certain lenders have committed to provide Parent or the Surviving Corporation with loans in the amounts described therein, the proceeds of which may be used to consummate the Merger and the other transactions contemplated hereby (the "Debt Financing") and, together with the equity financing referred to in clause (i) and the Rollover Commitments, the "Financing"). As of the date hereof, each of the Financing Commitments, in the form so delivered, is a legal, valid and binding obligation of Parent or Merger Sub, to the Parent's Knowledge, the other parties thereto. The Financing Commitments are in full force and effect and have not been withdrawn or terminated (and no party thereto has indicated an intent to so withdraw or terminate) or otherwise amended or modified in any respect (except that it is acknowledged that, following the date hereof, amounts committed pursuant to the equity commitment letters referred to in clause (i) are contemplated to be decreased in amounts equal to the increase in equity provided by the cash and rollover equity value represented by new Rollover Commitments) and neither Parent nor Merger Sub is in breach of any of the terms or conditions set forth therein and no event has occurred which, with or without notice, lapse of time or both, could reasonably be expected to constitute a material breach or failure to satisfy a condition precedent set forth therein. Assuming that the number of shares to be rolled over pursuant to the Rollover Commitments are contributed to Parent or one of its Subsidiaries prior to the Effective Time, the proceeds from the Financing constitute all of the financing required for the consummation of Merger and the other transactions contemplated hereby, and are sufficient for the satisfaction of all of Parent's and Merger Sub's obligations under this Agreement, including the payment of the Merger Consideration and the Option and Stock-Based Consideration. Parent or Merger Sub has fully paid any and all commitment fees or other fees on the dates and to the extent required by the Financing Commitments. The Financing Commitments contain all of the conditions

precedent to the obligations of the parties thereunder to make the Financing available to Parent on the terms therein. Notwithstanding anything in this Agreement to the contrary, the Debt Commitment Letters may be superseded at the option of Parent or Merger Sub after the date of this Agreement but prior to the Effective Time by the New Financing Commitments in accordance with Section 5.10. In such event, the term "Financing Commitment" as used herein shall be deemed to include the New Financing Commitments to the extent then in effect.

Section 4.5 Ownership and Operations of Merger Sub. As of the date of this Agreement, the authorized capital stock of Merger Sub consists of 100 shares of common stock, par value \$0.01 per share, all of which are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned by Parent or a direct or indirect wholly owned Subsidiary of Parent. Neither Parent nor Merger Sub has conducted any business other than incident to its formation and pursuant to this Agreement, the Merger and the other transactions contemplated hereby and the financing of such transactions.

Section 4.6 Finders or Brokers. Except for Goldman, Sachs & Co., neither Parent nor any of its Subsidiaries has engaged any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who might be entitled to any fee or any commission in connection with or upon consummation of the Merger or the other transactions contemplated hereby.

Section 4.7 Ownership of Shares. Neither Parent, as of the date hereof, nor Merger Sub owns any Shares, beneficially, of record or otherwise. Immediately prior to the Effective Time, Parent or Merger Sub will only own those Shares subject to the Rollover Commitments.

Section 4.8 Certain Arrangements. Other than the Voting Agreement, the Rollover Commitments entered into on the date of this Agreement and the Original LLC Agreement, there are no Contracts between Parent, Merger Sub or the Guarantors, on the one hand, and any member of the Company's management or directors, on the other hand, as of the date hereof that relate in any way to the Company or the transactions contemplated by this Agreement. Parent has provided the Special Committee with true, correct and complete copies of the Voting Agreement, the Rollover Commitments entered into on the date of this Agreement and the Original LLC Agreement. Prior to the Board of Directors of the Company approving this Agreement, the Voting Agreement, the Rollover Commitments entered into on the date of this Agreement, the Merger and the other transactions contemplated thereby for purposes of Section 17-12, 100 *et. seq.* of the KSA, neither Parent nor Merger Sub, alone or together with any other person, has taken any action that would cause Section 17-12, 100 *et. seq.* of the KSA to be applicable to this Agreement, the Merger, or any transactions contemplated by this Agreement.

Section 4.9 Investigations; Litigation. There are no suits, claims, actions, proceedings, arbitrations, mediations or investigations pending or, to the Knowledge of Parent, threatened against Parent or any of its Subsidiaries, other than any such suit, claim, action, proceeding or investigation that would have, individually or in the aggregate, a Parent Material Adverse Effect. As of the date hereof, neither Parent nor any of its Subsidiaries nor any of their respective properties is or are subject to any order, writ, judgment, injunction, decree or award that would have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 4.10 Guarantees. Concurrently with the execution of this Agreement, each of the Guarantors has delivered to the Company the Guarantees, dated as of the date hereof, in favor of the Company, in the form set forth in Section 4.10 of the Parent Disclosure Letter, with respect to the performance by Parent and Merger Sub, respectively, of their obligations under this Agreement.

Section 4.11 No Other Information. Parent and Merger Sub acknowledge that the Company makes no representations or warranties as to any matter whatsoever except as expressly set forth in ARTICLE III. The representations and warranties set forth in ARTICLE III are made solely by the Company, and no Representative of the Company shall have any responsibility or liability related thereto.

Section 4.12 Access to Information; Disclaimer. Parent and Merger Sub each acknowledges and agrees that it (a) has had an opportunity to discuss the business of the Company and its Subsidiaries with the management of the Company, (b) has had reasonable access to the books and records of the Company, its Subsidiaries and Company Joint Ventures, (c) has been afforded the opportunity to ask questions of and receive answers from officers of the Company and (d) has conducted its own independent investigation of the Company and its Subsidiaries, their respective businesses and the transactions contemplated hereby, and has not relied on any representation, warranty or other statement by any Person on behalf of the Company or any of its Subsidiaries or Joint Venture Companies, other than the representations and warranties of the Company expressly contained in ARTICLE III of this Agreement and that all other representations and warranties are specifically disclaimed.

ARTICLE V

COVENANTS AND AGREEMENTS

Section 5.1 Conduct of Business by the Company.

(a) From and after the date hereof and prior to the Effective Time or the date, if any, on which this Agreement is earlier terminated pursuant to Section 7.1 (the "Termination Date"), and except (i) as may be required by applicable Law, (ii) with the prior written consent of Parent, (iii) as expressly contemplated or permitted by this Agreement or (iv) as disclosed in Section 5.1 of the Company Disclosure Letter, the Company shall, and shall cause each of its Subsidiaries to, (i) conduct its business in all material respects in the ordinary course consistent with past practices, (ii) use commercially reasonable efforts to maintain and preserve intact its business organization and advantageous business relationships and to retain the services of its key officers and key employees and (iii) take no action which would materially adversely affect or materially delay the ability of any of the parties hereto from obtaining any necessary approvals of any regulatory agency or other Governmental Entity required for the transactions contemplated hereby, performing its covenants and agreements under this Agreement or consummating the transactions contemplated hereby or otherwise materially delay or prohibit consummation of the Merger or other transactions contemplated hereby; provided, however, that no action by the Company or its Subsidiaries with respect to matters specifically addressed by any other provision of this Section 5.1 shall be deemed a breach of this sentence unless such action would constitute a breach of such other provision.

(b) The Company agrees with Parent that between the date hereof and the Effective Time, except as set forth in Section 5.1(b) of the Company Disclosure Letter or expressly contemplated or expressly permitted by this Agreement, the Company shall not, and shall not permit any of its Subsidiaries to, without the prior written consent of Parent:

(i) adjust, split, combine or reclassify any capital stock or otherwise amend the terms of its capital stock;

(ii) make, declare or pay any dividend, or make any other distribution on, or directly or indirectly redeem, purchase or otherwise acquire or encumber, any shares of its capital stock or any securities or obligations convertible (whether currently convertible or convertible only after the passage of time or the occurrence of certain events) into or exchangeable for any shares of its capital stock, except in connection with cashless exercises or similar transactions pursuant to the exercise of stock options or other awards issued and outstanding as of the date hereof under the Company Stock Plans or permitted hereunder to be granted after the date hereof; provided that the Company may continue to pay its quarterly cash dividends in the ordinary course of its business consistent with past practices (but in no event in an amount in excess of \$0.875 per quarter) and that this Section 5.1 (b)(ii) shall not apply dividends or distributions paid in cash by Subsidiaries to the Company or to other Subsidiaries in the ordinary course of business consistent with past practice;

(iii) grant any person any right to acquire any shares of its capital stock;

(iv) issue any additional shares of capital stock except pursuant to the exercise of stock options or other awards issued under the Company Stock Plans issued and outstanding as of the date hereof and in accordance with the terms of such instruments; provided, that except as disclosed in Section 5.1(b)(iv) of the Company Disclosure Letter, the Company shall not issue any Shares under the Stock Purchase Plans;

(v) purchase, sell, transfer, mortgage, encumber or otherwise dispose of any properties or assets having a value in excess of \$50 million in the aggregate (other than commodity, purchase, sale or hedging agreements in the ordinary course of business), except as disclosed in Section 5.1(b)(v) of the Company Disclosure Letter;

(vi) make any capital expenditures not contemplated by the capital expenditure budget having an aggregate value in excess of \$50 million for any 12 consecutive month period;

(vii) incur, assume, guarantee, or become obligated with respect to any debt, which when taken together with all other debt of the Company and its Subsidiaries would result in there being indebtedness of the Company and its Subsidiaries greater than \$7.925 billion in the aggregate outstanding at any given time (excluding intercompany debt), or any debt which contains covenants that materially restrict the Merger or that are materially inconsistent with the Financing Commitments in effect as of the date hereof;

(viii) make any investment in excess of \$50 million in the aggregate, whether by purchase of stock or securities, contributions to capital, property transfers, or entering into binding agreements with respect to any such investment or acquisition;

(ix) make any acquisition of another Person or business in excess of \$50 million in the aggregate, whether by purchase of stock or securities, contributions to capital, property transfers, or entering into binding agreements with respect to any such investment or acquisition;

(x) except in the ordinary course of business consistent with past practice, enter into, renew, extend, materially amend or terminate (A) any Company Material Contract or Contract which if entered into prior to the date hereof would be a Company Material Contract, in each case, other than any Contract relating to indebtedness that would not be prohibited under clause (vii) of this Section 5.1(b), or (B) any Contracts not in the ordinary course, involving the commitment or transfer of value in excess of \$50 million in the aggregate in any year;

(xi) except to the extent required by Law or by Contracts in existence as of the date hereof or as disclosed in Section 5.1(b)(xi) of the Company Disclosure Letter, (A) increase in any manner the compensation or benefits of any of its employees, directors, consultants, independent contractors or service providers except in the ordinary course of business consistent with past practice (including, for this purpose, the normal employee salary, bonus and equity compensation review process conducted each year), (B) pay any pension, severance or retirement benefits not required by any existing plan or agreement to any such employees, directors, consultants, independent contractors or service providers, (C) enter into, amend, alter (other than amendments that are immaterial to the participants or employees, directors, consultants, independent contractors or service providers who are party and do not materially increase the cost to the Company or any of its Subsidiaries of maintaining the applicable compensation or benefit program, policy, arrangement or agreement), adopt, implement or otherwise commit itself to any compensation or benefit plan, program, policy, arrangement or agreement including any pension, retirement, profit-sharing, bonus or other employee benefit or welfare benefit plan, policy, arrangement or agreement or employment or consulting agreement with or for the benefit of any employee, director, consultant, independent contractor or service provider, (D) accelerate the vesting of, or the lapsing of restrictions with respect to, any stock options or other stock-based compensation, (E) cause the funding of any rabbi trust or similar arrangement or take any action to fund or in any other way secure the payment of compensation or benefits under any Company Benefit Plan, or (F) materially change any actuarial or other assumptions used to calculate funding obligations with respect to any Company Benefit Plan or change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP or applicable Law;

(xii) waive, release, assign, settle or compromise any claim, action or proceeding, other than waivers, releases, assignments, settlements or compromises that involve only the payment of monetary damages not in excess of \$50 million in the aggregate (excluding amounts to be paid under existing insurance policies) or otherwise pay, discharge or satisfy any claims, liabilities or obligations in excess of such amount, in each case, other than in the ordinary course consistent with past practice;

(xiii) amend or waive any provision of its articles of incorporation or its by-laws, partnership agreement, operating agreement or other equivalent organizational documents or, in the case of the Company, enter into any agreement with any of its stockholders in their capacity as such;

(xiv) take or omit to take any action that is intended or would reasonably be expected to, individually or in the aggregate, result in any of the conditions to the Merger set forth in ARTICLE VI not being satisfied or satisfaction of those conditions being materially delayed in violation of any provision of this Agreement;

(xv) enter into any "non-compete" or similar agreement that would materially restrict the businesses of the Surviving Corporation or its Subsidiaries following the Effective Time or that would in any way restrict the businesses of Parent or its Affiliates (excluding the Surviving Corporation, its Subsidiaries) or take any action that may impose new or additional material regulatory requirements on any Affiliate of Parent (excluding the Surviving Corporation and its Subsidiaries);

(xvi) adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of such entity;

(xvii) implement or adopt any material change in its Tax or financial accounting principles, practices or methods, other than as required by GAAP, applicable Law or regulatory guidelines;

(xviii) enter into any closing agreement with respect to material Taxes, settle or compromise any material liability for Taxes, make, revoke or change any material Tax election, agree to any adjustment of any material Tax attribute, file or surrender any claim for a material refund of Taxes, execute or consent to any waivers extending the statutory period of limitations with respect to the collection or assessment of material Taxes, file any material amended Tax Return or obtain any material Tax ruling;

(xix) enter into any new, or materially amend or otherwise materially alter any current, Affiliate Transaction or transaction which would be an Affiliate Transaction if such transaction occurred prior to the date hereof;

(xx) take any material action with respect to any Affiliate of the Company (other than any wholly owned Subsidiaries of the Company or any Company Joint Venture) that is outside the ordinary course of business consistent with past practices;

(xxi) agree to take, make any commitment to take, or adopt any resolutions of its Board of Directors in support of, any of the actions prohibited by this Section 5.1(b); or

(xxii) sell, contribute or otherwise directly or indirectly transfer, exchange, or dispose (or authorize or permit any such transfer, exchange or disposition) of (A) any of its limited or general partnership interests in Kinder Morgan Energy Partners, L.P.; (B) any equity interest in KMGP or (C) any of its interests in Kinder Morgan Management, LLC.

Section 5.2 Investigation.

(a) From the date hereof until the Effective Time and subject to the requirements of applicable Laws, the Company shall, and shall request KMP and KMR to, (i) provide to Parent, its counsel, financial advisors, auditors and other authorized representatives reasonable access during normal business hours to the offices, properties, books and records of the Company and its Subsidiaries and of KMP and KMR, (ii) furnish to Parent, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information as such persons may reasonably request (including, to the extent possible, furnishing to Parent the financial results of the Company and of KMP and KMR in advance of any filing by the Company with the SEC containing such financial results), and (iii) instruct the employees, counsel, financial advisors, auditors and other authorized representatives (other than directors who are not Employees) of the Company and its Subsidiaries and of KMP and KMR to cooperate reasonably with Parent in its investigation of the Company and its Subsidiaries and KMP and KMR, as the case may be, except that nothing herein shall require the Company or any of its Subsidiaries to disclose any information that would cause a violation of any agreement to which the Company or any of its Subsidiaries or KMP or KMR is a party or would cause a risk of a loss of privilege to the Company or any of its Subsidiaries or KMP or KMR. Any investigation pursuant to this Section 5.2(a) shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Company, its Subsidiaries, KMP and KMR. No information or knowledge obtained by Parent or Merger Sub in any investigation pursuant to this Section 5.2(a) shall affect or be deemed to modify any representation or warranty made by the Company in ARTICLE III.

(b) Parent hereby agrees that all information provided to it or its counsel, financial advisors, auditors and other authorized representatives in connection with this Agreement and the consummation of the transactions contemplated hereby shall be deemed to be "Evaluation Material" to the extent such information would be considered "Evaluation Material," in each case, as such term is used in, and shall be treated in accordance with, the Confidentiality Agreement, dated as of June 19, 2006, between the Company and GS Capital Partners Fund V, L.P.; the Confidentiality Agreement, dated as of June 20, 2006, between the Company and Carlyle Investment Management, LLC; the Confidentiality Agreement, dated as of June 20, 2006, between the Company and Carlyle/Riverstone Energy Partners, III, L.P.; and the Confidentiality Agreement, dated as of June 20, 2006, between the Company and AIG Global Asset Management Holdings Corp. (the "Confidentiality Agreements") had it been provided prior to the date of this Agreement; provided that Parent shall be entitled to share such Confidential Information with prospective co-investors or limited partners of the members of Parent; provided further, however, that any prospective co-investors or limited partners of the members of Parent to whom Parent provides Confidential Information shall, prior to receiving such Confidential Information, agree in writing to be bound by the confidentiality provisions of the Confidentiality Agreements or shall execute their own confidentiality agreements with the Company.

Section 5.3 No Solicitation.

(a) Subject to Section 5.3(b)-(g) and (k), the Company agrees that neither it nor any Subsidiary of the Company shall, and that it shall direct its and their respective officers, directors, employees, agents and representatives, including any investment banker, attorney or accountant retained by it or any of its Subsidiaries ("Representatives") not to, directly or indirectly, (i) initiate, solicit, knowingly encourage (including by providing information) or facilitate any inquiries, proposals or offers with respect to, or the making or completion of, an Alternative Proposal, (ii) engage or participate in any negotiations concerning, or provide or cause to be provided any non-public information or data relating to the Company, any of its Subsidiaries, any Company Joint Venture, KMP or KMR in connection with, or have any discussions with any person relating to, an actual or proposed Alternative Proposal, or otherwise knowingly encourage or facilitate any effort or attempt to make or implement an Alternative Proposal, (iii) approve, endorse or recommend, or propose publicly to approve, endorse or recommend, any Alternative Proposal, (iv) approve, endorse or recommend, or propose to approve, endorse or recommend, or execute or enter into, any letter of intent, agreement in principle, merger agreement, acquisition agreement, option agreement or other similar agreement relating to any Alternative Proposal, (v) amend, terminate, waive or fail to enforce, or grant any consent under, any confidentiality, standstill or similar agreement (provided, that the Company shall be permitted to waive any such agreement to permit the counterparty thereto to make a non-public offer or proposal to the Board of Directors (or Special Committee) of the Company with respect to an Alternative Proposal (except that references in the definition thereof to "20%" shall be deemed to be references to "50%" for purposes of this proviso), or (vi) resolve to propose or agree to do any of the foregoing; provided, however, it is understood and agreed that any determination or action by the Board of Directors of the Company (acting through its Special Committee) permitted under Section 5.3(c) or (d), or Section 7.1(c)(ii) shall not be deemed to be a breach or violation of this Section 5.3(a). Without limiting the foregoing, it is understood that any violation of the foregoing restrictions by any Subsidiary of the Company or Representatives of the Company or any of its Subsidiaries shall be deemed to be a breach of this Section 5.3 by the Company.

(b) The Company shall, shall cause each of its Subsidiaries to, and shall direct each of its Representatives to, immediately cease any existing solicitations, discussions or negotiations with any Person (other than the parties hereto) that has made or indicated an intention to make an Alternative Proposal.

(c) Notwithstanding anything to the contrary in Section 5.3(a) or (b), the Company may, in response to an unsolicited Alternative Proposal which did not result from or arise in connection with a breach of Section 5.3(a) and which the Board of Directors of the Company (acting through its Special Committee) determines, in good faith, after consultation with its outside counsel and financial advisors, may reasonably be expected to lead to a Superior Proposal, (i) furnish non-public information with respect to the Company and its Subsidiaries and KMP, KMR and any Company Joint Venture to the person making such Alternative Proposal and its Representatives pursuant to a customary confidentiality agreement no less restrictive of the other party than the Confidentiality Agreements; provided that such confidentiality agreement need not contain any standstill or similar provision, and (ii) participate in discussions or negotiations with such person and its Representatives regarding such Alternative Proposal; provided, however, (i) that Parent shall be entitled to receive an executed copy of such confidentiality agreement prior to or substantially simultaneously with the Company furnishing information to the person making such Alternative Proposal or its Representatives and (ii) that the Company shall simultaneously provide or make available to Parent any material non-public information concerning the Company or any of its Subsidiaries that is provided to the person making such Alternative Proposal or its Representatives which was not previously provided or made available to Parent.

(d) Subject to Section 7.1(c)(ii), neither the Board of Directors of the Company nor any committee thereof shall (i) withdraw or modify in a manner adverse to Parent or Merger Sub, or publicly propose to withdraw or modify in a manner adverse to Parent or Merger Sub, the Recommendation, (ii) approve any letter of intent, agreement in principle, acquisition agreement or similar agreement relating to any Alternative Proposal or (iii) approve or recommend, or publicly propose to approve, endorse or recommend, any Alternative Proposal. Notwithstanding the foregoing, but subject to Section 5.4(b), if, prior to receipt of the Company Stockholder Approval, the Board of Directors of the Company or the Special Committee determines in good faith, after consultation with outside counsel, that failure to so withdraw or modify its Recommendation would be inconsistent with the Board of Directors of the Company's or the Special Committee's exercise of its fiduciary duties, the Board of Directors of the Company or any committee thereof may withdraw or modify its Recommendation.

(e) The Company promptly (and in any event within 48 hours) shall advise Parent orally and in writing of (i) any Alternative Proposal or indication or inquiry with respect to or that would reasonably be expected to lead to any Alternative Proposal, (ii) any request for non-public information relating to the Company, its Subsidiaries, a Company Joint Venture, KMP or KMR, other than requests for information not reasonably expected to be related to an Alternative Proposal, and (iii) any inquiry or request for discussion or negotiation regarding an Alternative Proposal, including in each case the identity of the person making any such Alternative Proposal or indication or inquiry and the material terms of any such Alternative Proposal or indication or inquiry (including copies of any document or correspondence evidencing such Alternative Proposal or inquiry). The Company shall keep Parent reasonably informed on a reasonably current basis of the status (including any material change to the terms thereof) of any such Alternative Proposal or indication or inquiry.

(f) Notwithstanding the foregoing, the Company shall not waive Section 17 1286 *et seq.* and Section 17 12,100 *et seq.* of the KGCC with respect to any Person other than Parent, its interestholders and their respective Affiliates.

(g) Nothing contained in this Agreement shall prohibit the Company or its Board of Directors (or the Special Committee) from (i) disclosing to its stockholders a position contemplated by Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act.

(h) As used in this Agreement, "Alternative Proposal" shall mean (i) any inquiry, proposal or offer from any Person or group of Persons other than Parent or one of its Subsidiaries for a merger, reorganization, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company (or any Subsidiary or Subsidiaries of the Company whose business constitutes 20% or more of the net revenues, net income or assets of the Company and its Subsidiaries, taken as a whole), (ii) any proposal for the issuance by the Company of over 20% of its equity securities or (iii) any proposal or offer to acquire in any manner, directly or indirectly, over 20% of the equity securities or consolidated total assets of the Company and its Subsidiaries, in each case other than the Merger.

(i) As used in this Agreement, "Superior Proposal" shall mean any Alternative Proposal (i) on terms which the Board of Directors of the Company (or the Special Committee) determines in good faith, after consultation with the Company's outside legal counsel and financial advisors, to be more favorable from a financial point of view to the holders of Company Common Stock than the Merger (other than those holders of Company Common Stock who are party to a Rollover Commitment), taking into account all the terms and conditions of such proposal, and this Agreement (including any proposal or offer by Parent to amend the terms of this Agreement and the Merger during the 5 Business Day period referred to herein) and (ii) that the Board of Directors (or Special Committee) believes is reasonably capable of being completed, taking into account all financial, regulatory, legal and other aspects of such proposal; provided that the Board of Directors of the Company (or the Special Committee) shall not so determine that any such proposal is a Superior Proposal prior to the time that is 5 Business Days after the time at which the Company has complied in all respects with Section 5.3(e) with respect to such proposal, and provided that for purposes of the definition of "Superior Proposal", the references to "20%" in the definition of Company Acquisition Proposal shall be deemed to be references to "50%."

(j) Subject to applicable Law, the Company agrees that neither it nor any Subsidiary of the Company shall, and that it shall direct its Representatives not to, directly or indirectly, (i) initiate, solicit, encourage (including by providing information) or facilitate any inquiries, proposals or offers with respect to, or the making or completion of, a KMP/KMR Proposal, (ii) engage or participate in any negotiations concerning, or provide or cause to be provided any non-public information or data relating to Kinder Morgan Energy Partners, L.P. or Kinder Morgan Management, LLC in connection with, or have any discussions with any person relating to, an actual or proposed KMP/KMR Proposal, or otherwise knowingly encourage or facilitate any effort or attempt to make or implement a KMP/KMR Proposal. As used in this Agreement, a "KMP/KMR Proposal" shall mean (i) any inquiry, proposal or offer from any Person or group of Persons other than Parent or one of its Subsidiaries for a merger, consolidation, dissolution, recapitalization or other business combination involving Kinder Morgan Energy Partners, L.P. or Kinder Morgan Management, LLC or any of their respective Subsidiaries, (ii) any proposal for the issuance by Kinder Morgan Energy Partners, L.P. or Kinder Morgan Management, LLC of over 20% of their equity securities or (iii) any proposal or offer to acquire in any manner, directly or indirectly, over 20% of the equity securities of Kinder Morgan Energy Partners, L.P. or Kinder Morgan Management, LLC or of the consolidated total assets of Kinder Morgan Energy Partners, L.P. or Kinder Morgan Management, LLC, in each case other than the Merger.

(k) Notwithstanding anything to the contrary in this Section 5.3, (i) none of the provisions of this Section 5.3 that would require any action or inaction on the part of a Person that is a Representative of the Company or any of its Subsidiaries that is also a Representative of KMP or KMR (or KMGP when acting in any capacity on behalf of or with respect to KMR or KMP) requires or shall be construed to require such Person to take or refrain from taking any action when acting as a Representative of KMP or KMR (or KMGP), and (ii) no action or inaction taken or not taken by such Person when acting as a Representative of KMP or KMR (or KMGP) shall be deemed a breach of this Section 5.3.

Section 5.4 Filings; Other Actions.

(a) As promptly as reasonably practicable following the date of this Agreement, the Company shall prepare the Proxy Statement, and the Company and Parent shall prepare the Schedule 13E-3. Parent and the Company shall cooperate with each other in connection with the preparation of the foregoing documents. The Company will use its reasonable best efforts to have the Proxy Statement, and Parent and the Company will use their reasonable best efforts to have the Schedule 13E-3, cleared by the SEC as promptly as practicable after such filing. The Company will use its reasonable best efforts to cause the Proxy Statement to be mailed to the Company's stockholders as promptly as practicable after the Proxy Statement is cleared by the SEC. The Company shall as promptly as practicable notify Parent of the receipt of any oral or written comments from the SEC relating to the Proxy Statement. The Company shall cooperate and provide Parent with a reasonable opportunity to review and comment on the draft of the Proxy Statement (including each amendment or supplement thereto), and Parent and the Company shall cooperate and provide each other with a reasonable opportunity to review and comment on the draft Schedule 13E-3 (including each amendment or supplement thereto) and all responses to requests for additional information by and replies to comments of the SEC, prior to filing such with or sending such to the SEC, and Parent and the Company will provide each other with copies of all such filings made and correspondence with the SEC with respect thereto. If at any time prior to the Effective Time, any information should be discovered by any party hereto which should be set forth in an amendment or supplement to the Proxy Statement or the Schedule 13E-3 so that the Proxy Statement or the Schedule 13E-3 would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the party which discovers such information shall promptly notify the other parties hereto and, to the extent required by applicable Law, an appropriate amendment or supplement describing such information shall be promptly filed by the Company with the SEC and disseminated by the Company to the stockholders of the Company.

(b) Subject to the other provisions of this Agreement, the Company shall (i) take all action necessary in accordance with the KGCC (including, not less than 20 days prior to the Company Meeting, notifying each stockholder of record entitled to vote at such meeting that appraisal rights are available under Section 17-6712 of the KGCC) and its articles of incorporation and by-laws to duly call, give notice of, convene and hold a meeting of its stockholders as promptly as reasonably practicable following the mailing of the Proxy Statement for the purpose of obtaining the Company Stockholder Approval (such meeting or any adjournment or postponement thereof, the "Company Meeting"), and (ii) subject to the Board of Directors of the Company's or the Special Committee's withdrawal or modification of its Recommendation in accordance with Section 5.3(d), use reasonable best efforts to solicit from its stockholders proxies in favor of the approval of this Agreement, the Merger and the other transactions contemplated hereby. Notwithstanding anything in this Agreement to the contrary, unless this Agreement is terminated in accordance with Section 7.1 and subject to compliance with Section 7.2, the Company, regardless of whether the Board of Directors (whether or not acting through the Special Committee, if then in existence) has approved, endorsed or recommended an Alternative Proposal or has withdrawn, modified or amended the Recommendation, will submit this Agreement for adoption by the stockholders of the Company at the Company Meeting.

Section 5.5 Stock Options and Other Stock-Based Awards; Employee Matters.

(a) Stock Options and Other Stock-Based Awards.

(i) Except as otherwise agreed in writing by Parent and the applicable holder thereof, each option or other award to purchase shares of Company Common Stock (each, a "Company Stock Option") granted under any employee or director equity plans of the Company (the "Company Stock Plans"), whether vested or unvested, that is outstanding immediately prior to the Effective Time shall, as of the Effective Time, become fully vested and be converted into the right to receive within three Business Days following the Effective Time an amount in cash in U.S. dollars equal to the product of (x) the total number of shares of Company Common Stock subject to such Company Stock Option and (y) the excess, if any, of the amount of the Merger Consideration over the exercise price per share of Company Common Stock subject to such Company Stock Option (or if there is not any such excess, zero) with the aggregate amount of such payment rounded to the nearest cent (the aggregate amount of such cash hereinafter referred to as the "Option Consideration") less such amounts as are required to be withheld or deducted under the Code or any provision of U.S., state, local or foreign Tax Law with respect to the making of such payment.

(ii) Except as otherwise agreed in writing by Parent and the applicable holder thereof, at the Effective Time, each right of any kind, contingent or accrued, to receive shares of Company Common Stock or benefits measured in whole or in part by the value of a number of shares of Company Common Stock granted under the Company Stock Plans or Company Benefit Plans (including performance shares, restricted stock, restricted stock units, phantom units, deferred stock units and dividend equivalents), other than Restricted Shares (as hereinafter defined), shares acquired by participants pursuant to the terms of the Company's Employee Stock Purchase Plan and the Company's Foreign Subsidiary Employees Stock Purchase Plan, and Company Stock Options (each, other than Restricted Shares, Purchase Plan Shares and Company Stock Options, a "Company Stock-Based Award"), whether vested or unvested, which is outstanding immediately prior to the Effective Time shall cease to represent a right or award with respect to shares of Company Common Stock, shall become fully vested and shall entitle the holder thereof to receive, at the Effective Time an amount in cash equal to the Merger Consideration in respect of each Share underlying a particular Company Stock-Based Award (the aggregate amount of such cash, together with the Option Consideration, hereinafter referred to as the "Option and Stock-Based Consideration") less such amounts as are required to be withheld or deducted under the Code or any provision of U.S., state, local or foreign Tax Law with respect to the making of such payment.

(iii) Except as otherwise agreed in writing by Parent and the applicable holder thereof, immediately prior to the Effective Time, each award of restricted Company Common Stock (the "Restricted Shares") shall vest in full and be converted into the right to receive the Merger Consideration as provided in Section 2.1(a).

(iv) At the Effective Time, the Company's Employees Stock Purchase Plan and the Company's Foreign Subsidiary Employees Stock Purchase Plan (the "Stock Purchase Plans") shall terminate. In connection with such termination, the Company shall refund to the participants in the Stock Purchase Plans any accumulated payroll deductions in respect of any purchase period ending after the Effective Time. The participants in the Stock Purchase Plans shall be entitled to continue to make purchases of Company Common Stock pursuant to the terms of the Stock Purchase Plans for any purchase period ending prior to the Effective Time and such shares of Company Common Stock shall be converted into the right to receive the Merger Consideration in accordance with Section 2.1(a). After the date hereof, no participant in the Company's Foreign Subsidiary Employees Stock Purchase Plan may increase the percentage amount of his or her payroll deduction election from those in effect on the date hereof.

(v) Prior to the Effective Time, the Compensation Committee of the Board of Directors of the Company, or the Board of Directors of the Company, as appropriate, shall make such adjustments and amendments to, make such determinations or take such actions with respect to Company Stock Plans, Company Stock Options, Company Benefit Plans, Company Stock-Based Awards, Restricted Shares and Purchase Plan Shares, including obtaining consents where necessary, to implement the foregoing provisions of this Section 5.5.

(b) Employee Matters.

(i) From and after the Effective Time, Parent shall honor all Company Benefit Plans and compensation arrangements and agreements in accordance with their terms as in effect immediately before the Effective Time, provided that nothing herein shall limit the right of the Company or Parent from amending or terminating such plans, arrangements and agreements in accordance with their terms. For a period of one (1) year following the Effective Time, Parent shall provide, or shall cause to be provided, to each current and former employee of the Company and its Subsidiaries other than such employees covered by collective bargaining agreements ("Company Employees") compensation opportunities (excluding the value of equity-based awards) and benefits that are substantially comparable, in the aggregate, to the compensation opportunities and benefits provided to Company Employees immediately before the Effective Time, it being understood that the total package of such compensation and benefits may be different from the compensation and benefits provided to the Company Employees prior to the Effective Time.

(ii) For all purposes (including purposes of vesting, eligibility to participate and level of benefits) under the employee benefit plans of Parent and its Subsidiaries providing benefits to any Company Employees after the Effective Time as required pursuant to this Section 5.5(b) (the "New Plans"), each Company Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors before the Effective Time, to the same extent as such Company Employee was entitled, before the Effective Time, to credit for such service under any similar Company employee benefit plan in which such Company Employee participated or was eligible to participate immediately prior to the Effective Time, provided that the foregoing shall not apply with respect to benefit accrual under any defined benefit pension plan (other than the Kinder Morgan Inc. Retirement Plan) or to the extent that its application would result in a duplication of benefits. In addition, and without limiting the generality of the foregoing, to the extent permitted by such plans, (A) each Company Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is comparable to a Company Benefit Plan in which such Company Employee participated immediately before the consummation of the Merger (such plans, collectively, the "Old Plans"), and (B) for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Company Employee, Parent shall cause all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such employee and his or her covered dependents, unless such conditions would not have been waived under the comparable plans of the Company or its Subsidiaries in which such employee participated immediately prior to the Effective Time and Parent shall cause any eligible expenses incurred by such employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date such employee's participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(iii) Nothing contained herein shall be construed as requiring Parent or the Surviving Corporation to continue (or resume) the employment of any specific person.

(iv) Without limiting the generality of Section 8.10, no provision of this Section 5.5 shall be construed to create any third party beneficiary rights in any employee, officer, current or former director or consultant of the Company or its Subsidiaries, or any beneficiary of such employee, officer, director or consultant under a Company Benefit Plan or otherwise.

Section 5.6 Efforts.

(a) Subject to the terms and conditions set forth in this Agreement, each of the parties hereto shall, and the Company shall cause each of its Subsidiaries to, and shall request each of KMP and the Company Joint Ventures to, use its reasonable best efforts (subject to, and in accordance with, applicable Law) to take promptly, or to cause to be taken, all actions, and to do promptly, or to cause to be done, and to assist and to cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective the Merger and the other transactions contemplated hereby, including (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals, including the Company Approvals and the Parent Approvals, from Governmental Entities and the making of all necessary registrations and filings and the taking of all steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity, (ii) the obtaining of all necessary consents, approvals or waivers from third parties, (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby and (iv) the execution and delivery of any additional instruments reasonably necessary to consummate the transactions contemplated hereby; provided, however, that in no event shall the Company or any of its Subsidiaries be required to pay prior to the Effective Time any fee, penalties or other consideration to any third party to obtain any consent or approval required for the consummation of the Merger under any Contract (other than de minimis amounts or if Parent and Merger Sub have provided adequate assurance of repayment).

(b) Subject to the terms and conditions herein provided and without limiting the foregoing, the Company and Parent shall (i) promptly, but in no event later than fifteen (15) days after the date hereof, make their respective filings and thereafter make any other required submissions under the HSR Act as promptly as reasonably practicable, (ii) use reasonable best efforts to cooperate with each other in (x) determining whether any filings are required to be made with, or consents, permits, authorizations, waivers or approvals are required to be obtained from, any third parties or other Governmental Entities in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and (y) timely making all such filings and timely seeking all such consents, permits, authorizations or approvals, including but not limited to approvals from the California Public Utilities Commission, the Colorado Public Utilities Commission, the Wyoming Public Services Commission, the Nebraska Public Utilities Commission and under the Investment Canada Act and the Competition Act (Canada) (the "Specified Regulatory Clearances"), (iii) use reasonable best efforts to take, or to cause to be taken, all other actions and to do, or to cause to be done, all other things necessary, proper or advisable to consummate and make effective the Merger and the other transactions contemplated hereby, including taking all such further action as reasonably may be necessary to resolve such objections, if any, as the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice, state or foreign antitrust enforcement authorities or competition authorities, other Governmental Entities in connection with the Specified Regulatory Clearances, or other state or federal regulatory authorities of any other nation or other jurisdiction or any other person may assert under Regulatory Law (as hereinafter defined) with respect to the Merger and the other transactions contemplated hereby, and to avoid or eliminate each and every impediment under any Law that may be asserted by any Governmental Entity with respect to the Merger so as to enable the Closing to occur as soon as reasonably possible (and in any event no later than the End Date (as hereinafter defined)), (iv) subject to applicable legal limitations and the instructions of any Governmental Entity, keep each other apprised of the status of matters relating to the completion of the transactions contemplated by this Agreement, including to the extent permitted by Law promptly furnishing the other with true and complete copies of notices or other communications sent or received by the Company or Parent, as the case may be, or any of their Subsidiaries, to or from any third party and/or any Governmental Entity with respect thereto, and permit the other to review in advance any proposed communication by such party to any supervisory or Governmental Entity and (v) give the other reasonable notice of, and, to the extent permitted by such Governmental Entity, allow the other to attend and participate at any meeting with any Governmental Entity in respect of any filings, investigation or other inquiry or proceeding relating thereto. Notwithstanding anything in this Agreement to the contrary, except as provided below, nothing contained in this Agreement shall be deemed to require Parent, any of its Subsidiaries, the Company (unless requested by Parent), or the Surviving Corporation or any of its Subsidiaries to take or agree to take any Action of Divestiture or Limitation. For purposes of this Agreement, an "Action of Divestiture or Limitation" shall mean (i) executing or carrying out agreements or submitting to the requirements of any Governmental Entity providing for a license, sale or other disposition of any material assets or businesses or material categories of assets or businesses of the Company and its Subsidiaries or the holding separate of any material assets or businesses or Company capital stock or imposing or seeking to impose any material limitation on the ability of the Company or any of its Subsidiaries to own such assets or to acquire, hold or exercise full rights of ownership of the Company's business or on the ability of the Company to conduct the business of the Company and its Subsidiaries, (ii) modification of a Company Permit or the terms of any Contract with any customer of the Company or any of its subsidiaries in a manner that would materially affect the Company or (iii) the imposition of any condition or limitation that would materially affect the Company on or in connection with any approval listed on Section 6.3(e) of the Parent Disclosure Letter (other than any such condition or limitation to which such approval is customarily subject) or that materially restricts the business of Parent or that materially restricts the business of any of the Affiliates of Parent. The Company and Parent shall permit counsel for the other party reasonable opportunity to review in advance, and consider in good faith the views of the other party in connection with, any proposed written communication to any Governmental Entity. Notwithstanding anything in this Agreement to the contrary, the Company shall, upon the request of Parent, agree to take any Action of Divestiture or Limitation so long as such Action of Divestiture or Limitation is binding on the Company only in the event the Closing occurs; provided, however, that the Company shall not be required to take, or cause to be taken, any such action with respect to KMP or KMR unless such action is approved by the Conflicts and Audit Committee thereof in accordance with Section 6.9 of the Partnership Agreement. Notwithstanding anything in this Agreement to the contrary, the Company shall not undertake any Action of Divestiture or Limitation without the consent of Parent.

(c) Subject to the rights of Parent in Section 5.12, and in furtherance and not in limitation of the covenants of the parties contained in this Section 5.6, if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging the Merger or any other transaction contemplated by this Agreement, each of the Company and Parent shall cooperate in all respects with each other and shall use their respective reasonable best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Merger or any other transactions contemplated hereby. Notwithstanding the foregoing or any other provision of this Agreement, nothing in this Section 5.6 shall limit a party's right to terminate this Agreement pursuant to Section 7.1(b)(i) or (ii) so long as such party has, prior to such termination, complied with its obligations under this Section 5.6.

(d) For purposes of this Agreement, "Regulatory Law" means any and all state, federal and foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other Laws requiring notice to, filings with, or the consent or approval of, any Governmental Entity, or that otherwise may cause any restriction, in connection with the Merger and the transactions contemplated thereby, including (i) the Sherman Act of 1890, the Clayton Antitrust Act of 1914, the HSR Act, the Federal Trade Commission Act of 1914 and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening competition through merger or acquisition, (ii) any Law governing the direct or indirect ownership or control of any of the operations or assets of the Company and its Subsidiaries or (iii) any Law with the purpose of protecting the national security or the national economy of any nation.

Section 5.7 Takeover Statute. If any "fair price," "moratorium," "control share acquisition" or other form of anti-takeover statute or regulation shall become applicable to the Merger, the Voting Agreement, the Rollover Commitments or the other transactions contemplated by this Agreement after the date of this Agreement, each of the Company and Parent and the members of their respective Boards of Directors shall grant such approvals and take such actions as are reasonably necessary so that the Merger, the Voting Agreement, the Rollover Commitments and the other transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated herein and otherwise act to eliminate or minimize the effects of such statute or regulation on the Merger, the Voting Agreement, the Rollover Commitments and the other transactions contemplated hereby.

Section 5.8 Public Announcements. The Company and Parent will consult with and provide each other the opportunity to review and comment upon any press release or other public statement or comment prior to the issuance of such press release or other public statement or comment relating to this Agreement or the transactions contemplated herein and shall not issue any such press release or other public statement or comment prior to such consultation except as may be required by applicable Law or by obligations pursuant to any listing agreement with any national securities exchange. Parent and the Company agree to issue a joint press release announcing the execution and delivery of this Agreement.

Section 5.9 Indemnification and Insurance.

(a) Parent and Merger Sub agree that all rights to exculpation, indemnification and advancement of expenses for acts or omissions occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, now existing in favor of the current or former directors, officers or employees (in their capacity as such and not as stockholders or option holders of the Company or its Subsidiaries), as the case may be, of the Company or its Subsidiaries or KMP or KMR as provided in their respective certificates of incorporation or by-laws or other organization documents or in any agreement shall survive the Merger and shall continue in full force and effect. For a period of six (6) years from the Effective Time, Parent and the Surviving Corporation shall maintain in effect the exculpation, indemnification and advancement of expenses provisions of the Company's and any of its Subsidiaries' (and, unless otherwise required by the independent directors of Kinder Morgan Management, LLC, of KMP's and KMR's) articles of incorporation and by-laws or similar organization documents in effect immediately prior to the Effective Time or in any indemnification agreements of the Company or its Subsidiaries (and, unless otherwise required by the independent directors of Kinder Morgan Management, LLC, of KMP's and KMR's) with any of their respective directors, officers or employees in effect as of the date hereof, and shall not amend, repeal or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any individuals who at the Effective Time were current or former directors, officers or employees of the Company or any of its Subsidiaries or KMP or KMR; provided, however, that all rights to indemnification in respect of any Action (as hereinafter defined) pending or asserted or any claim made within such period shall continue until the disposition of such Action or resolution of such claim.

(b) From and after the Effective Time, each of Parent and the Surviving Corporation shall, to the fullest extent permitted under applicable Law, indemnify and hold harmless (and advance funds in respect of each of the foregoing) each current and former director, officer or employee of the Company or any of its Subsidiaries (each, together with such person's heirs, executors or administrators, an "Indemnified Party") against any costs or expenses (including advancing reasonable attorneys' fees and expenses in advance of the final disposition of any claim, suit, proceeding or investigation to each Indemnified Party to the fullest extent permitted by Law), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any actual or threatened claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (an "Action"), arising out of, relating to or in connection with any action or omission occurring or alleged to have occurred whether before or after the Effective Time (including acts or omissions in connection with such persons serving as an officer, director or other fiduciary in any entity if such service was at the request or for the benefit of the Company); provided, however, that neither Parent nor the Surviving Corporation shall be liable for any settlement effected without either Parent's or the Surviving Corporation's prior written consent and Parent and the Surviving Corporation shall not be obligated to pay the fees and expenses of more than one counsel (selected by a plurality of the applicable Indemnified Parties) for all Indemnified Parties in any jurisdiction with respect to any single such claim, action, suit, proceeding or investigation, unless the use of one counsel for such Indemnified Parties would present such counsel with a conflict of interest that would make such joint representation inappropriate. It shall be a condition to the advancement of any amounts to be paid in respect of legal and other fees and expenses that Parent or the Surviving Corporation receive an undertaking by the Indemnified Party to repay such legal and other fees and expenses paid in advance if it is ultimately determined that such Indemnified Party is not entitled to be indemnified under applicable Law. In the event of any such Action, Parent and the Surviving Corporation shall reasonably cooperate with the Indemnified Party in the defense of any such Action.

(c) For a period of six (6) years from the Effective Time, Parent shall either cause to be maintained in effect the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by the Company and its Subsidiaries or provide substitute policies or purchase or cause the Surviving Corporation to purchase, a "tail policy," in either case of at least the same coverage and amounts containing terms and conditions that are not less advantageous in the aggregate than such policy with respect to matters arising on or before the Effective Time; provided, however, that after the Effective Time, Parent shall not be required to pay with respect to such insurance policies in respect of any one policy year more than 250% of the last annual premium paid by the Company prior to the date hereof in respect of the coverages required to be obtained pursuant hereto, but in such case shall purchase as much coverage as reasonably practicable 250% of such last annual premium; and further provided that if the Surviving Corporation purchases a "tail policy" and the same coverage costs more than 250% of such last annual premium, the Surviving Corporation shall purchase the maximum amount of coverage that can be obtained for 250% of such last annual premium.

(d) The rights of each Indemnified Party hereunder shall be in addition to, and not in limitation of, any other rights such Indemnified Party may have under the articles of incorporation or by-laws or other organization documents of the Company or any of its Subsidiaries or KMP or KMR or the Surviving Corporation, any other indemnification arrangement, the KGCC or otherwise. The provisions of this Section 5.9 shall survive the consummation of the Merger and expressly are intended to benefit, and are enforceable by, each of the Indemnified Parties.

(e) In the event Parent, the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any person, then, and in either such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 5.9.

(f) Nothing in this Section 5.9 shall limit or restrict any actions that KMP or KMR (or KMGP when acting in any capacity on behalf of or with respect to KMP or KMR) may take or amounts that they may expend with respect to matters related to indemnification or insurance.

Section 5.10 Financing. Parent shall use its reasonable best efforts to obtain the Financing on the terms and conditions described in the Financing Commitments or terms more favorable to Parent, including using its reasonable best efforts (i) to negotiate definitive agreements with respect thereto on the terms and conditions contained in the Financing Commitments, (ii) to satisfy all conditions applicable to Parent in such definitive agreements, (iii) to comply with its obligations under the Financing Commitments and (iv) to enforce its rights under the Financing Commitments. Parent shall give the Company prompt notice upon becoming aware of any material breach by any party of the Financing Commitments or any termination of the Financing Commitments. Parent shall keep the Company informed on a reasonably current basis and in reasonable detail of the status of its efforts to arrange the Financing and provide to the Company copies of all documents related to the Financing (other than any ancillary documents subject to confidentiality agreements). In connection with its obligations under this Section 5.10, Parent shall be permitted to amend, modify or replace the Debt Commitment Letters with new Financing Commitments, including through co-investment by or financing from one or more other additional parties (the "New Financing Commitments"), provided Parent shall not permit any replacement of, or amendment or modification to be made to, or any waiver of any material provision or remedy under, the Debt Commitment Letter if such replacement (including through co-investment by or financing from one or more other additional parties), amendment, modification, waiver or remedy reduces the aggregate amount of the Financing required to consummate the Merger and the other transactions contemplated hereby, adversely amends or expands the conditions to the drawdown of the Financing in any respect that would make such conditions less likely to be satisfied, that can reasonably be expected to delay the Closing, or is adverse to the interests of the Company in any other material respect. In the event that Parent becomes aware of any event or circumstance that makes procurement of any portion of the Financing unlikely to occur in the manner or from the sources contemplated in the Financing Commitments, Parent shall notify the Company and shall use its reasonable best efforts to arrange as promptly as practicable any such portion from alternative sources (including through co-investment by one or more other additional parties) on terms and conditions no less favorable to Parent or Merger Sub and no more adverse to the ability of Parent to consummate the transactions contemplated by this Agreement. The Company shall provide, and shall cause its Subsidiaries, and shall use reasonable best efforts to cause each of its and their respective Representatives, including legal and accounting, to provide, and if necessary shall reasonably request KMP and KMR to provide, all cooperation reasonably requested by Parent in connection with the Financing and the other transactions contemplated by this Agreement (provided that such requested cooperation does not unreasonably interfere with the ongoing operations of the Company and its Subsidiaries or KMP or KMR), including (i) providing reasonably required information relating to the Company, its Subsidiaries and KMP and KMR to the parties providing the Financing, which shall include all financial statements and financial data for the Company and its Subsidiaries (A) of the type required by Regulation S-X and Regulation S-K under the Securities Act and of type and form customarily included in private placements under Rule 144A of the Securities Act to consummate any offering of senior or senior subordinated notes of the Company (or any direct or indirect parent thereof), including replacements thereof prior to any such information going stale or otherwise being unusable for such purpose and (B) all financial statements and information necessary for the satisfaction of the conditions set forth in the Debt Commitment Letter (the "Required Financial Information"), (ii) participating in meetings, drafting sessions and due diligence sessions in connection with the Financing, (iii) assisting in the preparation of (A) one or more offering documents or confidential information memoranda for any of the Debt Financing (including the execution and delivery of one or more customary representation letters in connection therewith) and (B) materials for rating agency presentations, (iv) reasonably cooperating with the marketing efforts for any of the Debt Financing, including providing assistance in the preparation for, and participating in, meetings, due diligence sessions and similar presentations to and with, among others, prospective lenders, investors and rating agencies, and (v) executing and delivering (or using reasonable best efforts to obtain from advisors), and causing its Subsidiaries to execute and deliver (or use reasonable best efforts to obtain from advisors), and if necessary reasonably requesting KMP and KMR to execute and deliver or obtain from advisors, customary certificates (including a certificate of the chief financial officer of the Company with respect to solvency matters), accounting comfort letters, legal opinions, surveys, title insurance or other documents and instruments relating to guarantees, the pledge of collateral and other matters ancillary to the Financing as may be reasonably requested by Parent in connection with the Financing and otherwise reasonably facilitating the pledge of collateral and providing of guarantees contemplated by the Debt Commitment Letter; provided, however, that no obligation of the Company or any of its Subsidiaries under any such certificate, document or instrument (other than the representation letter referred to above) shall be effective until the Effective Time and none of the Company or any of its Subsidiaries shall be required to pay any commitment or other similar fee or incur any other liability in connection with the Financing prior to the Effective Time. For purposes of this Agreement, "Marketing Period" shall mean

the first period of 15 consecutive Business Days after the date hereof throughout which (A) Parent shall have the Required Financial Information that the Company is required to provide to Parent pursuant to this Section 5.10, (B) the conditions set forth in Section 6.1 and Section 6.3 (other than 6.3(c)) shall be satisfied, and (C) the applicable auditors shall not have withdrawn their audit opinions for any applicable Required Financial Information; provided, that (x) such 15 Business Day period shall commence no earlier than (i) three Business Days after the condition set forth in Section 6.1(a) has been satisfied, and (y) if such 15 Business Day period would otherwise end on or after December 18, 2006, but before January 19, 2007, the Marketing Period shall end on January 22, 2007.

Section 5.11 [Intentionally omitted.]

Section 5.12 Stockholder Litigation. The Company shall give Parent the opportunity to participate, subject to a customary joint defense agreement, in, but not control, the defense or settlement of any stockholder litigation against the Company or its directors or officers relating to the Merger or any other transactions contemplated hereby; provided, however, that no such settlement shall be agreed to without Parent's consent. In the event that (i) a proposed settlement of any stockholder litigation (of which Parent has been advised and kept informed in accordance with the terms of this Section 5.12) would not have a Company Material Adverse Effect, (ii) Parent does not consent to such proposed settlement and (iii) the ultimate resolution of such litigation is less favorable to the Company and its Subsidiaries than such proposed settlement, then such resolution and the effects thereof on the Company and its Subsidiaries (to the extent so less favorable) shall not constitute, or be considered in determining the existence or occurrence of, a Company Material Adverse Effect.

Section 5.13 Notification of Certain Matters. The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of (i) any notice or other communication received by such party from any Governmental Entity in connection with the Merger or the other transactions contemplated hereby or from any person alleging that the consent of such person is or may be required in connection with the Merger or the other transactions contemplated hereby, if the subject matter of such communication or the failure of such party to obtain such consent could be material to the Company, the Surviving Corporation or Parent, (ii) any actions, suits, claims, investigations or proceedings commenced or, to such party's Knowledge, threatened against, relating to or involving or otherwise affecting such party or any of its Subsidiaries which relate to the Merger or the other transactions contemplated hereby, (iii) the discovery of any fact or circumstance that, or the occurrence or non-occurrence of any event the occurrence or non-occurrence of which, would cause or result in any of the Conditions to the Merger set forth in Article VI not being satisfied or satisfaction of those conditions being materially delayed in violation of any provision of this Agreement; provided, however, that the delivery of any notice pursuant to this Section 5.13 shall not (x) cure any breach of, or non-compliance with, any other provision of this Agreement or (y) limit the remedies available to the party receiving such notice. The Company shall notify Parent, on a reasonably current basis, of any events or changes with respect to any criminal or material regulatory investigation or action involving the Company or any of its Affiliates (but, excluding traffic violations or similar misdemeanors), and shall reasonably cooperate with Parent or its Affiliates in efforts to mitigate any adverse consequences to Parent or its Affiliates which may arise (including by coordinating and providing assistance in meeting with regulators).

Section 5.14 Rule 16b-3. Prior to the Effective Time, the Company shall take such steps as may be reasonably requested by any party hereto to cause dispositions of Company equity securities (including derivative securities) pursuant to the transactions contemplated by this Agreement by each individual who is a director or officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act in accordance with that certain No-Action Letter dated January 12, 1999 issued by the SEC regarding such matters.

Section 5.15 Control of Operations. Without in any way limiting any party's rights or obligations under this Agreement, the parties understand and agree that (i) nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company's operations prior to the Effective Time, and (ii) prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its operations.

Section 5.16 Certain Transfer Taxes. Any liability arising out of any real estate transfer Tax with respect to interests in real property owned directly or indirectly by the Company or any of its Subsidiaries immediately prior to the Merger, if applicable and due with respect to the Merger, shall be borne by the Surviving Corporation or Parent and expressly shall not be a liability of stockholders of the Company.

ARTICLE VI

CONDITIONS TO THE MERGER

Section 6.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the fulfillment (or waiver by all parties) at or prior to the Effective Time of the following conditions:

- (a) The Company Stockholder Approval shall have been obtained.
- (b) No restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger and/or the other transactions contemplated by this Agreement shall be in effect.
- (c) Any applicable waiting period under the HSR Act shall have expired or been earlier terminated.

Section 6.2 Conditions to Obligation of the Company to Effect the Merger. The obligation of the Company to effect the Merger is further subject to the fulfillment or waiver of the following conditions:

(a) (i) The representations and warranties of Parent and Merger Sub contained in Section 4.1 (Qualification, Organization) and Section 4.2(a) (Corporate Authority) shall be true and correct in all respects (except, in the case of Section 4.1(a) for such inaccuracies as are de minimis in the aggregate), in each case at and as of the date of this Agreement and at and as of the Closing Date as though made at and as of the Closing Date, (ii) the representations and warranties of Parent and Merger Sub set forth in this Agreement (other than in clause (i) above) which are qualified by a "Parent Material Adverse Effect" or "materiality" qualification shall be true and correct in all respects as so qualified at and as of the date of this Agreement and at and as of the Closing Date as though made at and as of the Closing Date and (iii) the representations and warranties of Parent and Merger Sub set forth in this Agreement (other than in clause (i) above) which are not qualified by a "Parent Material Adverse Effect" or "materiality" qualification shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing Date as though made at and as of the Closing Date; provided, however, that, with respect to clauses (i), (ii) or (iii) hereof, representations and warranties that are made as of a particular date or period shall be true and correct (in the manner set forth in clauses (i), (ii) or (iii), as applicable) only as of such date or period.

(b) Parent shall have in all material respects performed all obligations and complied with all covenants required by this Agreement to be performed or complied with by it prior to the Effective Time.

(c) Parent shall have delivered to the Company a certificate, dated the Effective Time and signed by its Chief Executive Officer or another senior executive officer, certifying to the effect that the conditions set forth in Section 6.2 (a) and 6.2(b) have been satisfied.

(d) Each of the approvals listed on Section 6.2(d) of the Company Disclosure Letter shall have been obtained.

Section 6.3 Conditions to Obligation of Parent and Merger Sub to Effect the Merger. The obligation of Parent and Merger Sub to effect the Merger is further subject to the fulfillment or waiver of the following conditions:

(a) (i) The representations and warranties of the Company contained in Section 3.1 (Qualification, Organization, Subsidiaries, etc.), Section 3.2 (Capital Stock), Section 3.3 (Subsidiaries and Company Joint Ventures), Section 3.4(a) (Corporate Authority), Section 3.21 (Required Vote of the Company Stockholders), and Section 3.24 (State Takeover Statutes; Charter Provisions) shall be true and correct in all respects (except, in the case of Section 3.1(a), 3.2 and 3.3 for such inaccuracies as are de minimis in the aggregate), in each case at and as of the date of this Agreement and at and as of the Closing Date as though made at and as of the Closing Date, (ii) the representations and warranties of the Company set forth in this Agreement (other than in clause (i) above) which are qualified by a "Company Material Adverse Effect" or "materiality" qualification shall be true and correct in all respects as so qualified at and as of the date of this Agreement and at and as of the Closing Date as though made at and as of the Closing Date and (iii) the representations and warranties of the Company set forth in this Agreement (other than in clause (i) above) which are not qualified by a "Company Material Adverse Effect" or "materiality" qualification shall be true and correct in all material respects at and as of the date of this Agreement and at and as of the Closing Date as though made at and as of the Closing Date; provided, however, that, with respect to clauses (i), (ii) or (iii) hereof, representations and warranties that are made as of a particular date or period shall be true and correct (in the manner set forth in clauses (i), (ii) or (iii), as applicable) only as of such date or period.

(b) The Company shall have in all material respects performed all obligations and complied with all covenants required by this Agreement to be performed or complied with by it prior to the Effective Time.

(c) The Company shall have delivered to Parent a certificate, dated the Effective Time and signed by its Chief Executive Officer or another senior executive officer, certifying to the effect that the conditions set forth in Section 6.3 (a) and Section 6.3(b) have been satisfied.

(d) Since the date of this Agreement there shall not have occurred and be continuing any Company Material Adverse Effect.

(e) Each of the approvals listed on Section 6.3(e) of the Parent Disclosure Letter shall have been obtained, without the imposition of any condition that would have the effect of an Action of Divestiture or Limitation.

ARTICLE VII

TERMINATION

Section 7.1 Termination or Abandonment. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated and abandoned at any time prior to the Effective Time, whether before or after any approval of the matters presented in connection with the Merger by the stockholders of the Company:

(a) by the mutual written consent of the Company and Parent;

(b) by either the Company or Parent, if:

(i) the Effective Time shall not have occurred on or before February 28, 2007, as extended to the end of the Marketing Period, if the Marketing Period has commenced and such end of the Marketing Period would be later (the "End Date"), and the party seeking to terminate this Agreement pursuant to this Section 7.1(b)(i) shall not have breached its obligations under this Agreement in any manner that shall have proximately caused the failure to consummate the Merger on or before the End Date; provided, however, that in the event the conditions set forth in Section 6.1(c), Section 6.2(d) or Section 6.3(e) shall not have been satisfied on or before the End Date, either Parent or the Company may unilaterally extend, by notice delivered to the other party on or prior to the original End Date, the End Date until August 28, 2007, in which case the End Date shall deemed to be for all purposes to be such date; provided, further, that the Company may not terminate under this clause during the Marketing Period;

(ii) an injunction, other legal restraint or order shall have been entered permanently restraining, enjoining or otherwise prohibiting the consummation of the Merger and such injunction, other legal restraint or order shall have become final and non-appealable, provided that the party seeking to terminate this Agreement pursuant to this Section 7.1(b)(i) shall have used its reasonable best efforts to remove such injunction, other legal restraint or order in accordance with Section 5.6; or

(iii) the Company Meeting (including any adjournments thereof) shall have concluded and the Company Stockholder Approval contemplated by this Agreement shall not have been obtained;

(c) by the Company, if:

(i) Parent shall have breached or failed to perform any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would result in a failure of a condition set forth in Section 6.1 or Section 6.2 and (ii) cannot be cured by the End Date, provided that the Company shall have given Parent written notice, delivered at least thirty (30) days prior to such termination, stating the Company's intention to terminate this Agreement pursuant to this Section 7.1(c)(i) and the basis for such termination;

(ii) prior to the receipt of the Company Stockholder Approval, (A) the Board of Directors of the Company (or the Special Committee) has received a Superior Proposal, (B) in light of such Superior Proposal a majority of the disinterested directors of the Company (or the Special Committee) shall have determined in good faith, after consultation with outside counsel, that the failure to withdraw or modify its Recommendation would be inconsistent with the Board of Directors of the Company's (or the Special Committee's) exercise of its fiduciary duty under applicable Law, (C) the Company has notified Parent in writing of the determinations described in clause (B) above, (D) at least 5 Business Days following receipt by Parent of the notice referred to in clause (C) above, and taking into account any revised proposal made by Parent since receipt of the notice referred to in clause (C) above, such Superior Proposal remains a Superior Proposal and a majority of the disinterested directors of the Company (or the Special Committee) has again made the determinations referred to in clause (B) above, (E) the Company is in compliance, in all material respects, with Section 5.3, (F) the Company has previously paid the fee due under Section 7.2 and (G) the Board of Directors of the Company has approved, and the Company concurrently enters into, a definitive agreement providing for the implementation of such Superior Proposal; or

(iii) the Merger shall not have been consummated by the last day of the Marketing Period and at the time of such termination the conditions set forth in Section 6.1, Section 6.3(a), Section 6.3(b), Section 6.3(d) and Section 6.3(e) have been satisfied; or

(d) by Parent, if:

(i) the Company shall have breached or failed to perform any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (i) would result in a failure of a condition set forth in Section 6.1 or Section 6.3 and (ii) cannot be cured by the End Date, provided that Parent shall have given the Company written notice, delivered at least thirty (30) days prior to such termination, stating Parent's intention to terminate this Agreement pursuant to this Section 7.1(d)(i) and the basis for such termination;

(ii) the Board of Directors of the Company or the Special Committee withdraws, modifies or qualifies in a manner adverse to Parent or Merger Sub, or publicly proposes to withdraw, modify or qualify, in a manner adverse to Parent or Merger Sub, its Recommendation, fails to recommend to the Company's stockholders that they give the Company Stockholder Approval or approves, endorses or recommends, or publicly proposes to approve, endorse or recommend, any Alternative Proposal;

(iii) the Company gives Parent the notification contemplated by Section 7.1(c)(ii)(C);

or

(iv) since the date of this Agreement there shall have been a Company Material Adverse Effect that cannot be cured by the End Date.

In the event of termination of this Agreement pursuant to this Section 7.1, this Agreement shall terminate (except for the Confidentiality Agreements, the Guarantees and the provisions of Section 7.2 and ARTICLE VIII), and there shall be no other liability on the part of the Company or Parent and Merger Sub to the other except liability arising out of any willful breach of any of the representations, warranties or covenants in this Agreement by the Company (subject to any express limitations set forth in this Agreement), or as provided for in the Confidentiality Agreements or the Guarantees, in which case the aggrieved party shall be entitled to all rights and remedies available at law or in equity.

Section 7.2 Termination Fees.

(a) In the event that:

(i) (A) an Alternative Proposal that reasonably appears to be bona fide shall have been made known to the Company or shall have been made directly to its stockholders generally or any person shall have publicly announced an intention (whether or not conditional or withdrawn) to make an Alternative Proposal that reasonably appears to be bona fide and thereafter, (B) this Agreement is terminated by the Company or Parent pursuant to Section 7.1(b)(i), Section 7.1(b)(iii) (so long as the Alternative Proposal was publicly disclosed and not withdrawn at the time of the Company Meeting) or Section 7.1(d)(i), and (C) the Company enters into a definitive agreement with respect to, or consummates, a transaction contemplated by any Alternative Proposal within twelve (12) months of the date this Agreement is terminated; provided that for purposes of this Section 7.2(a)(i), the references to "20%" in the definition of Alternative Proposal shall be deemed to be references to "50%,"

(ii) this Agreement is terminated by the Company pursuant to Section 7.1(c)(ii); or

(iii) this Agreement is terminated by Parent pursuant to Section 7.1(d)(i), (ii) or (iii); provided, that in the event of a termination by Parent pursuant to Section 7.1(d)(i), without limiting Parent's other rights and remedies under this Agreement, this Section 7.2(a)(iii) shall apply only in the event that the Company shall have willfully breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement;

then in any such event under clause (i), (ii) or (iii) of this Section 7.2(a), the Company shall pay to Parent a termination fee of \$215 million in cash (the "Termination Fee"), it being understood that in no event shall the Company be required to pay the Termination Fee on more than one occasion.

In the event that an Alternative Proposal shall have been made known to the public or shall have been made directly to its stockholders generally or any person shall have publicly announced an intention (whether or not conditional or withdrawn) to make an Alternative Proposal that reasonably appears to be bona fide and thereafter this Agreement is terminated by the Company or Parent pursuant to Section 7.1(b)(iii) and no Termination Fee is yet payable in respect thereof pursuant to Section 7.2(a)(i), then the Company shall pay to Parent all of the Expenses (as hereinafter defined) of Parent and Merger Sub and thereafter if the Company is obligated to pay to Parent the Termination Fee pursuant to Section 7.2(a)(i) such payment obligation shall be reduced by the amount of Expenses previously actually paid to Parent pursuant to this sentence. As used herein, "Expenses" shall mean all reasonable out-of-pocket documented fees and expenses (including all fees and expenses of counsel, accountants, consultants, financial advisors and investment bankers of Parent and its Affiliates), up to \$45 million in the aggregate, incurred by Parent or Merger Sub or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement and the Financing and all other matters related to the Merger.

(b) In the event that (i) the Company shall terminate this Agreement pursuant to Section 7.1(c)(i), provided, that in the event of a termination by the Company pursuant to Section 7.1(c)(i), without limiting the Company's other rights and remedies under this Agreement, this Section 7.2(b) shall only apply in the event that Parent or Merger Sub shall have willfully breached or failed to perform in any material respect any of their representations, warranties, covenants or other agreements contained in this Agreement and (y) at the time of such termination there is no state of facts or circumstances that would reasonably be expected to cause the conditions in Section 6.1, Section 6.3(a), Section 6.3(b), Section 6.3(d) or Section 6.3(e) not to be satisfied on the End Date assuming the Closing were to be scheduled on the End Date, (ii) Parent or the Company shall terminate this Agreement pursuant to Section 7.1(b)(i) and, at the time of such termination, the conditions set forth in Section 6.1, Section 6.3(a), Section 6.3(b), Section 6.3(d) and Section 6.3(e) have been satisfied, or (iii) the Company shall terminate this Agreement pursuant to Section 7.1(c)(iii), then Parent shall pay to the Company a termination fee of \$215 million in cash (the "Parent Termination Fee"), it being understood that in no event shall Parent be required to pay the Parent Termination Fee on more than one occasion.

(c) Any payment required to be made pursuant to clause (i) of Section 7.2(a) shall be made to Parent promptly following the earlier of the execution of a definitive agreement with respect to, or the consummation of, any transaction contemplated by an Alternative Proposal (and in any event not later than two Business Days after delivery to the Company of notice of demand for payment); any payment required to be made pursuant to clause (ii) of Section 7.2(a) shall be made to Parent concurrently with, and as a condition to the effectiveness of, the termination of this Agreement by the Company pursuant to Section 7.1(c)(ii); any payment required to be made pursuant to clause (iii) of Section 7.2(a) shall be made to Parent promptly following termination of this Agreement by Parent pursuant to Section 7.1(d)(i), (ii) or (iii), as applicable (and in any event not later than two Business Days after delivery to the Company of notice of demand for payment), and such payment shall be made by wire transfer of immediately available funds to an account to be designated by Parent. In circumstances in which Expenses or Required Expenses, as the case may be, are payable, such payment shall be made to Parent or the Company, as the case may be not later than two Business Days after delivery to the Company or Parent, as the case may be, of an itemization setting forth in reasonable detail all Expenses or Required Expenses, as the case may be (which itemization may be supplemented and updated from time to time by Parent or the Company, as the case may be, until the 60th day after Parent or the Company, as the case may be, delivers such notice of demand for payment), and all such payments shall be made by wire transfer of immediately available funds to an account to be designated by the Company or Parent, as the case may be. Any payment required to be made pursuant to Section 7.2(b) shall be made to the Company promptly following termination of this Agreement by the Company or Parent, as the case may be (and in any event not later than two Business Days after delivery to Parent of notice of demand for payment), and such payment shall be made by wire transfer of immediately available funds to an account to be designated by the Company.

(d) In the event that the Company shall fail to pay the Termination Fee and/or Expenses, or Parent shall fail to pay the Parent Termination Fee, required pursuant to this Section 7.2 when due, such fee and/or Expenses, as the case may be, shall accrue interest for the period commencing on the date such fee and/or Expenses, as the case may be, became past due, at a rate equal to the rate of interest publicly announced by Citibank, in the City of New York from time to time during such period, as such bank's Prime Lending Rate. In addition, if either party shall fail to pay such fee and/or Expenses, as the case may be, when due, the such owing party shall also pay to the owed party all of the owed party's costs and expenses (including attorneys' fees) in connection with efforts to collect such fee and/or Expenses, as the case may be. Parent and the Company acknowledges that the fees, Expense reimbursement and the other provisions of this Section 7.2 are an integral part of the Merger and that, without these agreements, Parent and the Company would not enter into this Agreement.

(e) Each of the parties hereto acknowledges that the agreements contained in this Section 7.2 are an integral part of the transactions contemplated by this Agreement and that neither the Termination Fee nor the Parent Termination Fee is a penalty, but rather is liquidated damages in a reasonable amount that will compensate Parent and Merger Sub or the Company, as the case may be, for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision. Notwithstanding anything to the contrary in this Agreement, (i) the Company's right to receive payment of the Parent Termination Fee pursuant to this Section 7.2 or the guarantee thereof pursuant to the Guarantees shall be the exclusive remedy of the Company against Parent, Merger Sub, the Guarantors or any of their respective stockholders, partners, members, directors, Affiliates, officers or agents for (x) the loss suffered as a result of the failure of the Merger to be consummated and (y) any other losses, damages, obligations or liabilities suffered as a result of or under this Agreement and the transactions contemplated hereby, and upon payment of the Parent Termination Fee in accordance with this Section 7.2, none of Parent, Merger Sub or the Guarantors, or any of their respective stockholders, partners, members, directors, officers or agents, as the case may be, shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby (except that Parent also shall be obligated with respect to the provisions of Section 7.2(d), Section 5.2(b) and Section 8.2, it being understood that no other person (including the Guarantors) shall have any liability or obligation under or with respect to such provisions); and (ii) upon payment of the Company Termination Fee, in accordance with this Section 7.2, except as set forth in Section 7.1(d), none of the Company or any of its respective stockholders, directors, officers or agents, as the case may be, shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby (except that the Company also shall be obligated with respect to the provisions of Section 7.2(d) and 5.2(b), it being understood that no other person shall have any liability or obligation under or with respect to such provisions).

ARTICLE VIII

MISCELLANEOUS

Section 8.1 No Survival of Representations and Warranties. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Merger.

Section 8.2 Expenses. Except as set forth in Section 7.2 or in the Guarantees, whether or not the Merger is consummated, all costs and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated hereby shall be paid by the party incurring or required to incur such expenses, except expenses incurred in connection with the printing, filing and mailing of the Proxy Statement (including applicable SEC filing fees) and all fees paid in respect of any HSR Act or other regulatory filing shall be borne one-half by the Company and one-half by Parent.

Section 8.3 Counterparts; Effectiveness. This Agreement may be executed in two or more consecutive counterparts (including by facsimile), each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by telecopy or otherwise) to the other parties.

Section 8.4 Governing Law. This Agreement, and all claims or causes of action (whether at law, in contract or in tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof, shall be governed by and construed in accordance with the laws of the State of Delaware (other than with respect to matters governed by KGCC, with respect to which such laws apply), without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

Section 8.5 Jurisdiction; Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that prior to the termination of this Agreement in accordance with ARTICLE VII the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement exclusively in any federal or state court located in the State of Delaware, this being in addition to any other remedy which they are entitled at law or in equity. In addition, each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party hereto or its successors or assigns, shall be brought and determined exclusively in any federal or state court located in the State of Delaware. Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated hereby in any court other than the aforesaid courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 8.5, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

Section 8.6 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 8.7 Notices. Any notice required to be given hereunder shall be sufficient if in writing, and sent by facsimile transmission (provided that any notice received by facsimile transmission or otherwise at the addressee's location on any Business Day after 5:00 p.m. (addressee's local time) shall be deemed to have been received at 9:00 a.m. (addressee's local time) on the next Business Day), by reliable overnight delivery service (with proof of service), hand delivery or certified or registered mail (return receipt requested and first-class postage prepaid), addressed as follows:

To Parent or Merger Sub:

c/o Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Telecopy: (212) 403-2000
Attention: David M. Silk
Mitchell S. Presser
Igor Kirman

with copies to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Telecopy: (212) 403-2000
Attention: David M. Silk
Mitchell S. Presser
Igor Kirman

Weil, Gotshal & Manges LLP
100 Federal Street, 34th Floor
Boston, MA 02110
Telecopy: (617) 772-8333
Attention: James R. Westra

Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
Dallas, TX 75201
Telecopy: (214) 746-7777
Attention: R. Jay Tabor

To the Company:

500 Dallas St., Suite 1000
Houston, TX 77002
Telecopy: (713) 495-2737
Attention: Joseph Listengart

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., N.W.
Washington, D.C. 20005
Telecopy: (202) 661-8200
Attention: Michael P. Rogan
Stephen W. Hamilton

Bracewell & Giuliani LLP
711 Louisiana Street, Suite 2300
Houston, Texas 77002
Telecopy: (713) 221-2166
Attention: Gary W. Orloff

or to such other address as any party shall specify by written notice so given, and such notice shall be deemed to have been delivered as of the date so telecommunicated, personally delivered or mailed. Any party to this Agreement may notify any other party of any changes to the address or any of the other details specified in this paragraph; provided, however, that such notification shall only be effective on the date specified in such notice or five (5) Business Days after the notice is given, whichever is later. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

Section 8.8 Assignment; Binding Effect. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties, except that Merger Sub may assign, in its sole discretion, any of or all of its rights, interest and obligations under this agreement to Parent or to any direct or indirect wholly-owned subsidiary of Parent, but no such assignment shall relieve Merger Sub of its obligations hereunder. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Parent shall cause Merger Sub, and any assignee thereof, to perform its obligations under this Agreement.

Section 8.9 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

Section 8.10 Entire Agreement; No Third-Party Beneficiaries. This Agreement (including the exhibits and letters hereto), the Confidentiality Agreements and the Guarantees constitute the entire agreement, and supersede all other prior agreements and understandings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof and thereof and, except as set forth in Section 5.9, is not intended to and shall not confer upon any person other than the parties hereto any rights or remedies hereunder.

Section 8.11 Amendments; Waivers. At any time prior to the Effective Time, any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Company (approved by the Special Committee), Parent and Merger Sub, or in the case of a waiver, by the party against whom the waiver is to be effective (and, in the case of the Company, as approved by the Special Committee); provided, however, that after receipt of Company Stockholder Approval, if any such amendment or waiver shall be applicable Law or in accordance with the rules and regulations of the New York Stock Exchange require further approval of the stockholders of the Company, the effectiveness of such amendment or waiver shall be subject to the approval of the stockholders of the Company. Notwithstanding the foregoing, no failure or delay by the Company or Parent in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder.

Section 8.12 Headings. Headings of the Articles and Sections of this Agreement are for convenience of the parties only and shall be given no substantive or interpretive effect whatsoever. The table of contents to this Agreement is for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.13 Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." Whenever the words "the transactions contemplated hereby" or similar words or phrases appear, such words or phrases shall be deemed to be followed by the words "(but not including the Financing or any other arrangements, agreements or understandings to which the Company is not a party)." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "or" shall be deemed to mean "and/or." All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement. Any time materiality of effect is measured with respect to the Company and its Subsidiaries, the interests not owned directly or indirectly by the Company and its wholly owned Subsidiaries shall be excluded.

Section 8.14 No Recourse. This Agreement may only be enforced against, and any claims or causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the entities that are expressly identified as parties hereto or the Guarantors and no past, present or future Affiliate, director, officer, employee, incorporator, member, manager, partner, stockholder, agent, attorney or representative of any party hereto (other than the Guarantors) shall have any liability for any obligations or liabilities of the parties to this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby.

Section 8.15 Determinations by the Company. Whenever a determination, decision or approval by the Company is called for in this Agreement, such determination, decision or approval must be authorized by the Special Committee or, if the Special Committee is not then in existence, the Company's Board of Directors.

Section 8.16 Certain Definitions. For purposes of this Agreement, the following terms will have the following meanings when used herein:

(a) "Affiliates" shall mean, as to any person, any other person which, directly or indirectly, controls, or is controlled by, or is under common control with, such person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

(b) "Business Day" shall mean any day other than a Saturday, Sunday or a day on which the banks in New York are authorized by law or executive order to be closed.

(c) “Company Joint Ventures” means (a) the Express joint venture, (b) the Plantation joint venture, (c) the Rockies Express joint venture, (d) the Cortez Pipeline joint venture, and (e) except for purposes of Section 3.4(c)(i) and Section 3.12, the Red Cedar joint venture.

(d) “Contracts” means any contracts, agreements, licenses, notes, bonds, mortgages, indentures, commitments, leases or other instruments or obligations, whether written or oral.

(e) “KMGP” means Kinder Morgan G.P., Inc., a Delaware corporation.

(f) “Knowledge” means (i) with respect to Parent, the knowledge of the individuals listed on Section 8.16 (f)(i) of the Parent Disclosure Letter after reasonable inquiry and (ii) with respect to the Company, the knowledge of the individuals listed on Section 8.16(f)(ii) of the Company Disclosure Letter after reasonable inquiry.

(g) “LLC Agreement” means the Second Amended and Restated Limited Liability Company Agreement of Kinder Morgan Management, LLC, dated as of July 23, 2002.

(h) “Orders” or “orders” means any orders, judgments, injunctions, awards, decrees or writs handed down, adopted or imposed by, including any consent decree, settlement agreement or similar written agreement with, any Governmental Entity.

(i) “Original LLC Agreement” means the Limited Liability Company Agreement of Knight Holdco LLC, dated as of August 28, 2006.

(j) “Partnership Agreement” means the Third Amended and Restated Agreement of Limited Partnership of Kinder Morgan Energy Partners, L.P., dated as of May 18, 2001, as amended by Amendment No. 1, dated as of November 19, 2004, and further amended by Amendment No. 2, dated as of April 29, 2005.

(k) “Partnership Event” means (i) the failure of Kinder Morgan Energy Partners, L.P., Kinder Morgan Operating L.P. “A”, Kinder Morgan Operating L.P. “B”, Kinder Morgan Operating L.P. “C”, Kinder Morgan Operating L.P. “D”, Kinder Morgan CO₂ Company L.P. or SFPP L.P. to qualify as a partnership, or an entity that is disregarded as separate from its owner, as applicable, for federal income tax purposes or the failure of Kinder Morgan Energy Partners, L.P. to meet the gross income requirements under Section 7704(c) of the Code in each Tax year since its formation, up to and including the current Tax year, (ii) any circumstance that would constitute an “Event of Withdrawal” under Section 13.1(a) of the Partnership Agreement, (iii) any circumstance that would constitute dissolution of Kinder Morgan Energy Partners, L.P. under Article XIV of the Partnership Agreement, (iv) any circumstance that would constitute a “Mandatory Purchase Event” under the LLC Agreement, (v) removal of KMGP as the general partner of Kinder Morgan Energy Partners, L.P. without the consent of the Company and its Subsidiaries (including KMGP), (vi) the failure by KMGP to maintain its general partnership interest through additional Capital Contributions (as defined in Partnership Agreement) as required by Section 4.1(d) of the Partnership Agreement, (vii) approval by KMGP of any amendment of the Partnership Agreement pursuant to Sections 15.1 (d), 15.1(f), 15.3(b)(ii) and 15.3(d) thereof, and (viii) consent by KMGP to any merger or consolidation of Kinder Morgan Energy Partners, L.P. in accordance with Section 16.2 of the Partnership Agreement or a sale of all or substantially all of the assets of Kinder Morgan Energy Partners, L.P. in accordance with Section 6.1 of the Partnership Agreement.

(l) “person” or “Person” shall mean an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity, group (as such term is used in Section 13 of the Exchange Act) or organization, including, without limitation, a Governmental Entity, and any permitted successors and assigns of such person.

(m) “Rollover Commitment” means the commitment made by a Person listed on Section 8.16(m) of the Parent Disclosure Letter in such Person’s equity rollover letter, which has been executed and which is valid and binding.

(n) “Special Committee” means a committee of the Company’s Board of Directors, the members of which are not affiliated with Merger Sub and are not members of the Company’s management, formed for the purpose of evaluating, and making a recommendation to the full Board of Directors of the Company with respect to, this Agreement and the transactions contemplated hereby, including the Merger, and shall include any successor committee to the Special Committee existing as of the date of this Agreement or any reconstitution thereof.

(o) “Subsidiaries” of any party shall mean any corporation, partnership, association, trust or other form of legal entity of which (i) more than 50% of the outstanding voting securities are on the date hereof directly or indirectly owned by such party, or (ii) such party or any Subsidiary of such party is a general partner (excluding partnerships in which such party or any Subsidiary of such party does not have a majority of the voting interests in such partnership); provided, however, that Kinder Morgan Management LLC, a Delaware limited liability company and its Subsidiaries (together with its Subsidiaries, “KMR”) and Kinder Morgan Energy Partners, L.P., a Delaware limited partnership and its Subsidiaries (together with its Subsidiaries, “KMP”) shall be deemed “Subsidiaries” of the Company solely for purposes of (1) the representations and warranties of the Company contained in ARTICLE III, (2) the definition of “Company Material Adverse Effect” in Section 3.1(c), (3) the definition “Action of Divestiture or Limitation” in Section 5.6(b) or whether the condition set forth in Section 6.3(e) has been satisfied, (4) the provision in Section 5.6(b) that provides that “nothing contained in this Agreement shall be deemed to require Parent, any of its Subsidiaries, the Company (unless requested by Parent), or the Surviving Corporation or any of its Subsidiaries to take or agree to take any Action of Divestiture or Limitation”, (4) Section 5.9(a) and (5) the last sentence of Section 8.13; provided, further, that the Company Joint Ventures shall not be deemed “Subsidiaries” of the Company for purposes of this Agreement. For the sake of clarity, no covenant that would require any action or inaction on the part of any Subsidiary or Affiliate of the Company shall be construed to require KMGP to take or refrain from taking any such action when acting in any capacity on behalf of or with respect to KMP or KMR.

(p) Each of the following terms is defined on the page set forth opposite such term:

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

KNIGHT HOLDCO LLC

By: /s/ Richard D. Kinder

Name: Richard D. Kinder

Title: Authorized Person

KNIGHT ACQUISITION CO.

By: /s/ Richard D. Kinder

Name: Richard D. Kinder

Title: Authorized Person

KINDER MORGAN, INC.

By: /s/ Joseph Listengart

Name: Joseph Listengart

Title: Vice President and General Counsel

EX-99.1 3 v051538_ex99-1.htm

Exhibit 99.1

Kinder Morgan, Inc. Enters Into Agreement to Sell to Investor Group for \$107.50 Per Share

HOUSTON, Aug. 28 /PRNewswire-FirstCall/ -- Kinder Morgan, Inc. (NYSE: KMI - News) today announced it has signed a definitive merger agreement under which Chairman and CEO Richard D. Kinder, together with other members of management, co-founder Bill Morgan, current board members Fayez Sarofim and Mike Morgan, and investment partners Goldman Sachs Capital Partners and certain affiliates, American International Group, Inc. and certain affiliates (principally AIG Financial Products and AIG Highstar Capital), The Carlyle Group and Riverstone Holdings LLC, ("Investor Group") will acquire KMI in a transaction valued at approximately \$22 billion. This includes the assumption of approximately \$7 billion of debt.

Under the terms of the agreement, KMI stockholders will receive \$107.50 in cash for each share of KMI common stock they hold. The board of directors of KMI, on the unanimous recommendation of a special committee comprised entirely of independent directors, has approved the agreement and will recommend that KMI's stockholders approve the merger.

The purchase price represents a premium of approximately 27 percent over \$84.41, the closing price of KMI stock on Friday, May 26, the last trading day before the Investor Group made its proposal to take the company private.

"We are proud to partner with this prominent group of private equity firms, all of which have proven records of success," said Kinder. "They share our goals and will be strong partners moving forward. I also want to thank our 8,300 employees for their efforts and the company's success and assure them that we will continue to focus on incentive programs that enable them to share in the company's future accomplishments."

Kinder, who will continue as Chairman and CEO following the close of the transaction, will reinvest all of his 24 million KMI shares. "This buyout reflects the confidence that senior management and the sponsors have in the potential of Kinder Morgan Energy Partners, L.P. (NYSE: KMP - News). KMI's ownership of the general partner of, and other partnership interests in, KMP represents KMI's largest asset," Kinder said.

The transaction is expected to be completed by early 2007, subject to receipt of stockholder approval and regulatory approvals, as well as the satisfaction of other customary closing conditions.

The transaction will be financed through a combination of equity contributed by the Investor Group, and debt financing provided by Goldman Sachs Credit Partners L.P. and affiliates of Citigroup Global Market Inc., Deutsche Bank Securities Inc., Wachovia Securities and Merrill Lynch, Pierce, Fenner & Smith Incorporated. There is no financing condition to the obligation of the Investor Group to consummate the transaction.

Morgan Stanley and The Blackstone Group L.P. are acting as financial advisors to the special committee, and have each delivered a fairness opinion. Skadden, Arps, Slate, Meagher & Flom LLP is acting as legal advisor to the special committee. Bracewell & Giuliani LLP is acting as legal advisor to the independent directors.

Goldman Sachs & Co. is acting as financial advisor to the Investor Group. Wachtell, Lipton, Rosen and Katz is acting as legal advisor to the private equity investors, and Weil, Gotshal and Manges LLP is acting as legal advisor to Richard Kinder and the other management investors. Simpson Thacher & Bartlett LLP is acting as legal advisor on the financing to the Investor Group.

Kinder Morgan, Inc. is one of the largest energy transportation, storage and distribution companies in North America. It owns an interest in or operates approximately 43,000 miles of pipelines that transport primarily natural gas, crude oil, petroleum products and CO₂; more than 150 terminals that store, transfer and handle products like gasoline and coal; and provides natural gas distribution service to over 1.1 million customers. KMI owns the general partner interest of Kinder Morgan Energy Partners, one of the largest publicly traded pipeline limited partnerships in the United States. Combined, the companies have an enterprise value of more than \$35 billion.

Founded in 1869, Goldman Sachs is one of the oldest and largest investment banking firms. Goldman Sachs is also a global leader in private corporate equity and mezzanine investing. Established in 1992, the GS Capital Partners Funds are part of the firm's Principal Investment Area in the Merchant Banking Division. Goldman Sachs' Principal Investment Area has formed 12 investment vehicles aggregating \$35 billion of capital to date. With \$8.5 billion in committed capital, GS Capital Partners V is the current primary investment vehicle for Goldman Sachs to make privately negotiated equity investments.

American International Group, Inc. (AIG), world leaders in insurance and financial services, is the leading international insurance organization with operations in more than 130 countries and jurisdictions. AIG companies serve commercial, institutional and individual customers through the most extensive worldwide property-casualty and life insurance networks of any insurer. In addition, AIG companies are leading providers of retirement services, financial services and asset management around the world. AIG's common stock is listed in the U.S. on the New York Stock Exchange as well as the stock exchanges in London, Paris, Switzerland and Tokyo. For further information on AIG see <http://www.aig.com>.

The Carlyle Group is a global private equity firm with \$41.9 billion under management. Carlyle invests in buyouts, venture & growth capital, real estate and leveraged finance in Asia, Europe and North America, focusing on aerospace & defense, automotive & transportation, consumer & retail, energy & power, healthcare, industrial, technology & business services and telecommunications & media. Since 1987, the firm has invested \$19.7 billion of equity in 500 transactions for a total purchase price of \$79.7 billion. The Carlyle Group employs more than 670 people in 15 countries. In the aggregate, Carlyle portfolio companies have more than \$46 billion in revenue and employ more than 184,000 people around the world. See <http://www.carlyle.com>.

Riverstone Holdings LLC is a New York-based energy and power focused private equity firm founded in 2000 with \$7 billion currently under management. Riverstone conducts buyout and growth capital investments in the midstream, upstream, power and oilfield service sectors of the energy industry. To date, the firm has committed more than \$3 billion to over 20 investments across each of these four sectors, involving more than \$15 billion of assets. For more information on Riverstone Holdings, see <http://www.riverstonellc.com>.

This news release includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Although it is believed that the expectations are based on reasonable assumptions, there can be no assurance that such assumptions will materialize. Important factors that could cause actual results to differ materially from those in the forward-looking statements herein are enumerated in Kinder Morgan Inc.'s and Kinder Morgan Energy Partners, L.P.'s Forms 10-K and 10-Q as filed with the Securities and Exchange Commission.

Important Additional Information Regarding the Merger will be Filed with the SEC:

In connection with the proposed Merger, the Company will file a proxy statement with the Securities and Exchange Commission (the "SEC"). INVESTORS AND SECURITY HOLDERS ARE ADVISED TO READ THE PROXY STATEMENT WHEN IT BECOMES AVAILABLE BECAUSE IT WILL CONTAIN IMPORTANT INFORMATION ABOUT THE MERGER AND THE PARTIES TO THE MERGER. Investors and security holders may obtain a free copy of the proxy statement (when available) and other relevant documents filed with the SEC from the SEC's website at <http://www.sec.gov>. The Company's security holders and other interested parties will also be able to obtain, without charge, a copy of the proxy statement and other relevant documents (when available) by directing a request by mail or telephone to Investor Relations, Kinder Morgan, Inc., 500 Dallas Street, Suite 1000, Houston, Texas 77002, telephone (713) 369-9490, or from the Company's website, <http://www.kindermorgan.com>.

The Company and its directors, executive officers and other members of its management and employees may be deemed to be participants in the solicitation of proxies from the Company's shareholders with respect to the Merger. Information about the Company's directors and executive officers and their ownership of the Company's common stock is set forth in the proxy statement for the Company's 2006 Annual Meeting of Shareholders, which was filed with the SEC on April 3, 2006. Shareholders and investors may obtain additional information regarding the interests of the Company and its directors and executive officers in the Merger, which may be different than those of the Company's shareholders generally, by reading the proxy statement and other relevant documents regarding the Merger, which will be filed with the SEC.

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

1 IN THE MATTER OF THE)
2 APPLICATION OF KINDER MORGAN,))
3 INC., KM RETAIL UTILITIES)
4 HOLDCO LLC, AND)
5 SOURCE GAS DISTRIBUTION LLC)
FOR APPROVAL OF ASSET)
TRANSFER OF JURISDICTIONAL)
UTILITY ASSETS)

NG 00-_____

**PREPARED DIRECT TESTIMONY
OF
DANIEL E. WATSON**

DIRECT TESTIMONY OF DANIEL E. WATSON

8 Q: What is your name?

9 A: Daniel E. Watson.

10 Q. What is your current employment?

11 A. I am the President of the Retail Natural Gas division of Kinder Morgan, Inc. I oversee the
12 company's business unit that provides natural gas distribution and related services to more
13 than 240,000 residential, commercial and agricultural customers in Colorado, Wyoming
14 and Nebraska.

15 Q. Please state briefly your professional experience and qualifications.

16 A. Since joining the company in 1990, I have held a variety of management positions
17 including those pertaining to gas purchase contracts, marketing, supply and contract
18 negotiations. Prior to joining Kinder Morgan, I worked for Amoco Production Company,
19 where I served as Regional Gas Marketing Coordinator for the Denver Region.

20 Q. Would you briefly describe your educational background?

21 A. I am a graduate of South Dakota School of Mines, where I earned bachelor's degrees in
22 geological and mining engineering. I serve on the board of directors for the Midwest
23 Energy Association.

24 Q. On whose behalf are you testifying in this proceeding?

25 A. I am testifying on behalf of the Applicants in this proceeding.
26
27
28

1 Q. What is the purpose of your testimony?

2 Q. I am testifying in support of the Application and will identify and briefly describe the
3 facts showing that no changes in utility management, operations, and services, are
4 expected to occur as a result of the Asset Transfer and Buy-Out Transaction, which are
5 described in the Application.

6 Q. Are you familiar with the statutory requirements in Nebraska for obtaining Commission
7 approval for the transfer of assets subject to the jurisdiction of the Commission, including
8 the transfer of certificates of public convenience, and a reorganization or change of
9 control?

10 A: Yes. I am.

11 Q: Are you aware of, and have you provided, information and facts to support
12 approval of the Application in accordance with the statutory requirements.

13 A: Yes, that information has been provided as part of the Application. I am familiar
14 with that Application and have reviewed all of the information provided therein,
15 which was compiled at my direction and under my supervision.

16 Q: Is all of that information true, accurate and correct to the best of your knowledge?

17 A: Yes, it is, as indicated by my signature verifying the contents of the Application.

18 Q: Please briefly explain the Buy-Out Transaction?

19 A: As the Application explains, the co-founders of Kinder Morgan and a consortium
20 of investors are purchasing most of the public stock of Kinder Morgan for
21 \$107.50 per share. Ms. Kimberly Dang provides greater details of the Buy-Out
22 Transaction in her testimony. In addition, the Buy-Out Transaction is further
23 described in Kinder Morgan's SEC Form 8-K, filed August 28, 2006, and attached
24 as Exhibit 3 to the Application.

25 Q. Does the Application also request approval of an internal restructuring?

26 A. Yes. Kinder Morgan currently conducts retail operations in Nebraska as a division of
27 Kinder Morgan, Inc. The local distribution assets in Colorado, Wyoming and Nebraska
28 will be conveyed to a new entity called Source Gas Distribution LLC ({Source Gas

1 Distribution). Kinder Morgan has formed a holding company called KM Retail Utility
2 Holdco LLC to hold its public utility assets and business operations located in the United
3 States, which include Source Gas Distribution.

4 Q: How will this the Asset Transfer and the Buy-Out Transaction impact customers?

5 A. There will be no change in the nature or quality of service customers will receive, nor in
6 the tariffs applicable to such service, as a result of the Asset Transfer (other than a tariff
7 change to reflect the use of the name "Source Gas Distribution") or as a result of the Buy-
8 Out Transaction. . Source Gas Distribution will continue to conduct the utility operations
9 in the ordinary course of business, consistent with past practices after the Asset Transfer
10 and Buy-Out Transaction. It is expected that the current employees of Kinder Morgan
11 who are involved in the retail distribution and intrastate pipeline operations will continue
12 in their current or similar positions. Those employees will be performing the same or
13 similar functions with Source Gas Distribution as they currently perform.

14 Q. Please describe whether, or how, the transaction will affect the current management and
15 operations with respect to the utility operations?

16 A. I expect that there will be no change in current management and operations.

- 17 • The management of Kinder Morgan, Inc. and the utility operations is not expected
18 to change as a result of the Asset Transfer and Buy-Out Transaction described in
19 the Application. Richard Kinder, the Chairman and CEO of Kinder Morgan, and
20 his management team are expected to continue in their current management roles
21 to manage Kinder Morgan after the Asset Transfer and Buy-Out Transaction.
- 22 • The management of the utility operations is expected to continue. The
23 management and employees of the utility operations will continue to be
24 thoroughly qualified and experienced after the Asset Transfer and Buy-Out
25 Transaction. I intend to continue as President of the utility operations after the
26 transaction, and expect that my retail utility management team under me will
27 continue in their respective roles.

- 1 • There will be no change in the utility facilities or operations as a result of the
- 2 Asset Transfer and Buy-Out Transaction described in the Application.
- 3 • The existing utility facilities and operations will continue to be safe, reliable and
- 4 adequate after the Asset Transfer and Buy-Out Transaction.
- 5 • There will be no change in gas supplies or upstream delivery arrangements as a
- 6 result of the Asset Transfer and Buy-Out Transaction described in the
- 7 Application. The existing gas supply and upstream, delivery arrangements will
- 8 continue to be safe, reliable and adequate after the Asset Transfer and
- 9 Buy Out.
- 10 • There will be no change in customer service or billing operations as a result of the
- 11 Asset Transfer and Buy-Out Transaction described in the Application. The
- 12 existing customer service and billing operations will continue to reliably serve
- 13 customers after the Asset Transfer and Buy-Out Transaction.
- 14 • Subject to the terms of the merger agreement, it is expected that Kinder Morgan's
- 15 benefit plans and compensation arrangements will be honored and employees will
- 16 be provided with compensation and benefits that are substantially comparable, in
- 17 the aggregate, to those in effect before the Buy-Out Transaction. As a general
- 18 matter, employee compensation after the Buy-Out Transaction will not include
- 19 equity based awards such as stock options since Kinder Morgan will no longer
- 20 have publicly traded stock. In addition, existing union contracts will continue to
- 21 be honored.
- 22 • There will be no change in rates or tariffs as a result of the Asset Transfer and
- 23 Buy-Out Transaction described in this Application. Source Gas Distribution LLC
- 24 will file a notice of tariff adoption and make such name change filings as
- 25 necessary.
- 26 • There will be no change in the location of the utility operations offices or
- 27 management at 370 Van Gordon Street, Lakewood, Colorado, as a result of the
- 28 Asset Transfer and Buy-Out Transaction described in the Application. The

1 existing offices and management will continue to be located at that address in
2 Lakewood, Colorado. .

- 3 • There will be no change in regulatory access to the books and records of the utility
4 operations as a result of the Asset Transfer and Buy-Out Transaction described in
5 the Application. The books and records of the utility operations will continue to
6 be located at the company offices in Lakewood, Colorado.
- 7 • There will be no change in the access to adequate capital as a result of the Asset
8 Transfer and Buy-Out Transaction described in the Application. The utility
9 operations will continue to have access to adequate capital.
- 10 • Kinder Morgan's assets will be transferred at net book value, so there will be no
11 acquisition adjustment, gain or loss resulting from the Asset Transfer.

12 Q. How will you inform customers about the Asset Transfer and Buy-Out
13 Transaction?

14 A. The Asset Transfer and Buy-Out Transaction will be seamless to customers. We
15 will inform customers as necessary through bill inserts, and will also inform
16 customers and the general public as necessary through appropriate mass media.

17
18 Q. Have you reviewed the Exhibits that are attached to the Application?

19 Yes, I am familiar with the Exhibits to the Application. They are true and correct
20 copies of the pertinent business records and I attest to them and the information
21 contained in them.

22
23 Q. Do you adopt and sponsor the statements and facts in the Application and the Exhibits as
24 part of your sworn testimony and evidence offered in this proceeding?

25 A. Yes.

26 Q. Does that conclude your direct testimony?

27 A. Yes.
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2 APPLICATION OF KINDER MORGAN,))
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5 SOURCE GAS DISTRIBUTION LLC)
FOR APPROVAL OF ASSET)
TRANSFER OF JURISDICTIONAL)
UTILITY ASSETS)

NG 00-_____

**PREPARED DIRECT TESTIMONY
OF
KIMBERLY A. DANG**

DIRECT TESTIMONY OF KIMBERLY ALLEN DANG

7 Q. Please state your name and business address.

8 A. My name is Kimberly A. Dang. My business address is Kinder Morgan, Inc., 500 Dallas
9 Street, Suite 1000, Houston, Texas 77002.

10 Q. What is your occupation?

11 A. I am the Chief Financial Officer and Vice President of Investor Relations of Kinder
12 Morgan, Inc., which I refer to in this testimony as "Kinder Morgan". Kinder Morgan is
13 one of the largest energy transportation, storage and distribution companies in North
14 America. In addition to its gas distribution businesses, it owns an interest in or operates
15 for itself or for Kinder Morgan Energy Partners, L.P. (which I refer to in this testimony as
16 "KMP"), a publicly traded limited partnership, approximately 43,000 miles of pipelines
17 that transport primarily natural gas, crude oil, petroleum products and CO₂. Kinder
18 Morgan has more than 150 terminals that store, transfer and handle products like gasoline
19 and coal.

20 Q. Please state briefly your professional experience and qualifications.

21 A. I have worked at Kinder Morgan for the past five years in various capacities, including
22 Treasurer, Vice President of Investor Relations and now Vice President and Chief
23 Financial Officer. Prior to joining Kinder Morgan, I spent six years at Goldman Sachs
24 working in the company's real estate investment area. I also worked in Washington, D.C.,
25 as a legislative assistant for Congressman Jack Fields and in Austin, Texas, for a venture
26 capital firm.

1 Q. Would you briefly describe your educational background?

2 A. I hold an MBA from the J.L. Kellogg Graduate School of Management at Northwestern
3 University and a bachelor's degree in accounting from Texas A&M University.

4 Q. On whose behalf are you testifying in this proceeding?

5 A. I am testifying on behalf of Applicants.

6 Q. What is the purpose of your direct testimony?

7 A. I am testifying in support of the Application in this proceeding and will identify and
8 briefly describe the key elements and steps to be taken pursuant to a merger agreement
9 whereby certain members of Kinder Morgan management, together with certain private
10 equity funds and other investors, will become the indirect owners of Kinder Morgan,
11 which as a result of the merger agreement will become a privately-held company. No
12 changes in utility management, operations, services, etc. are expected to occur as a result
13 of the merger as I will address in my testimony.

14 II. Merger Transaction

15 Q. Please describe the transaction you just referenced.

16 A. Below, I identify and describe briefly, the parties to the merger, the merger itself, the
17 effects of the merger on ownership of Kinder Morgan, required votes, recommendations,
18 conditions and financing of the merger.

- 19 • **The Parties to the Merger.** The parties to the merger agreement are Kinder
20 Morgan, Knight Holdco LLC and Knight Acquisition Co. As I previously stated,
21 Kinder Morgan is one of the largest energy transportation, storage and distribution
22 companies in North America. It indirectly owns the general partner interest of
23 KMP, one of the largest publicly traded pipeline limited partnerships in the United
24 States in terms of market capitalization and the largest independent refined
25 products pipeline system in the United States in terms of volumes delivered.

- 26 ○ Knight Holdco LLC, which I refer to in this testimony as "Parent,"
27 is a Delaware limited liability company. Knight Holdco LLC is
28

1 expected to have a Board of Managers comprised of eleven
2 members, six of which will be designated by the Sponsor Investors,
3 a term I will subsequently define. Immediately following the
4 merger, Parent will be owned by entities and individuals I will refer
5 to collectively in this testimony as the Investors. The Investors will
6 consist of:
7

- 8 • certain private equity funds and other entities providing the equity
9 financing for the merger, who I refer to in this testimony as
10 Sponsor Investors
- 11 • certain current or former directors or officers of Kinder Morgan (or
12 entities controlled by such persons), who I refer to in this testimony
13 as Rollover Investors, who are directly or indirectly reinvesting all
14 or a portion of their equity interests in Kinder Morgan and/or cash
15 in exchange for equity interests in Parent.
- 16 • The Sponsor Investors are affiliates of GS Capital Partners V Fund,
17 L.P., American International Group, Inc., The Carlyle Group and
18 Riverstone Holdings LLC and their permitted assignees. The
19 Rollover Investors are Richard D. Kinder, Chairman and Chief
20 Executive Officer of Kinder Morgan, Michael Morgan and Fayez
21 Sarofim, directors of Kinder Morgan, William Morgan, a founder
22 of Kinder Morgan, Portcullis Partners, LP, an investment
23 partnership in which Michael Morgan and William Morgan have
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1 an interest, and certain other members of senior management of
2 Kinder Morgan.

3 o Knight Acquisition Co., which I refer to in this testimony as Acquisition
4 Co., is a Kansas corporation and wholly owned subsidiary of Parent.

- 5 • **The Merger.** Whenever I refer to the merger agreement in this testimony, please
6 note that I am referring to the Agreement and Plan of Merger described in Kinder
7 Morgan's SEC Form 8-K dated August 28, 2006, which is attached to the
8 Application as Exhibit 3. Kinder Morgan will become a privately-held company
9 as a result of the proposed merger. Pursuant to the merger agreement, which
10 together with applicable state law governs the merger, Acquisition Co. will be
11 merged with and into Kinder Morgan, with Kinder Morgan continuing as the
12 surviving company in the merger, and which I sometimes refer to in this testimony
13 as the Surviving Corporation. At the time of the merger, each outstanding share
14 of Kinder Morgan (other than any shares owned by Parent, Acquisition Co.,
15 subsidiaries of Kinder Morgan, any stockholders who are entitled to and who
16 properly exercise appraisal rights under Kansas law and all or a portion of the
17 shares owned by the Rollover Investors) will be converted into the right to receive
18 \$107.50 in cash, without interest. The merger, valued at approximately \$22
19 billion, will be financed through a combination of equity contributed by the
20 Investors and debt financing, including the assumption of approximately \$7
21 billion of debt. Richard D. Kinder is expected continue as Chairman and CEO of
22 Kinder Morgan following the merger. The merger is expected to be completed by
23 early 2007, subject to the terms and conditions of the merger agreement.
- 24 • Immediately following the merger, Kinder Morgan, as the Surviving Corporation
25 in the merger, will become a privately-held company, wholly owned by Parent or
26 one or more of its subsidiaries. Parent will be owned by the entities and
27 individuals mentioned earlier and referred to collectively as the Investors.
28

- 1 • **Effects of the Merger.** As a result of the merger, Kinder Morgan's stockholders,
2 other than the Investors, will no longer have a direct or indirect equity interest in
3 Kinder Morgan; Kinder Morgan common stock will no longer be listed on the
4 New York Stock Exchange; and the registration of Kinder Morgan common stock
5 under Section 12 of the Securities Exchange Act of 1934, as amended, will be
6 terminated. In addition, unless otherwise agreed between a holder and Parent, all
7 outstanding options to purchase shares of Kinder Morgan common stock not
8 exercised prior to the merger will vest and be cancelled and converted into the
9 right to receive a cash payment, and similarly, unless otherwise agreed between a
10 holder and Parent, all shares of restricted stock or Kinder Morgan stock based
11 awards will vest and be cancelled and converted into the right to receive a cash
12 payment.
- 13 • **Required Vote.** The affirmative vote of at least the holders of two-thirds of all of
14 the Kinder Morgan common stock then entitled to vote at a meeting of
15 stockholders, which means two-thirds of the outstanding shares of Kinder Morgan
16 common stock, is required to approve and adopt the merger agreement.
- 17 • **Recommendations.** The special committee of independent directors of Kinder
18 Morgan's board of directors that was appointed to review and evaluate the merger
19 proposal has unanimously determined that the merger agreement, the merger and
20 the other transactions contemplated thereby are fair to, advisable to and in the best
21 interests of the public stockholders (by which I mean the stockholders other than
22 the Rollover Investors) of Kinder Morgan. The special committee has also
23 recommended to the full Kinder Morgan board of directors that the board of
24 directors approve the merger agreement and that the stockholders of Kinder
25 Morgan approve and adopt the merger agreement. After considering factors
26 including the unanimous recommendation of the special committee, on August
27
28

1 27, 2006, Kinder Morgan's board of directors has unanimously, among other
2 things:

- 3 (i) determined that the merger agreement, the merger and the other
4 transactions contemplated thereby are fair to, advisable to and in the best
5 interests of the public stockholders of Kinder Morgan;
6 (ii) approved and adopted the merger agreement and the transactions
7 contemplated thereby, including the merger; and
8 (iii) recommended that Kinder Morgan's stockholders approve and adopt the
9 merger agreement.

- 10 • **Conditions Required to Complete the Merger.** The merger will be completed
11 only if the conditions set forth in the merger agreement are satisfied or waived.
12 These conditions include, among others:

- 13 (i) approval and adoption of the merger agreement by the required vote of the
14 stockholders;
15 (ii) the absence of any legal restraint or prohibition preventing the
16 consummation of the merger and the other transactions contemplated by
17 the merger agreement;
18 (iii) the expiration or early termination of any applicable waiting period under
19 the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended;
20 (iv) the receipt of other regulatory approvals from the Federal Energy
21 Regulatory Commission, the public utility commissions of several states,
22 including this Commission, and appropriate regulatory authorities in
23 Canada and Mexico;
24 (v) the absence of any fact, circumstance, event, change, effect or occurrence
25 that constitutes a material adverse effect on Kinder Morgan that has
26 occurred since the date of the merger agreement and is continuing;
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1 (vi) the representations and warranties of Kinder Morgan and those of Parent
2 and Acquisition Co. being true and correct, subject in many cases to
3 materiality or material adverse effect qualifications; and

4 (vii) Kinder Morgan's and Parent's performance in all material respects of all of
5 their respective obligations and compliance in all material respects with all
6 of their respective agreements in the merger agreement.

7 ○ At any time before the merger, to the extent legally allowed, the board of
8 directors of Kinder Morgan may waive compliance with any of the
9 conditions contained in the merger agreement without the approval of its
10 stockholders and Parent may waive compliance with any of the conditions
11 contained in the merger agreement.

12 • **Termination of the Merger Agreement.** Under certain circumstances, the
13 merger agreement may be terminated and the merger may be abandoned at any
14 time prior to the effective time of the merger, whether prior to or after Kinder
15 Morgan's stockholders approve and adopt the merger agreement.

16 • **Financing of the Merger.** The merger agreement does not contain any condition
17 relating to the receipt of financing by Parent and Acquisition Co. in order to
18 consummate the merger transaction. Parent estimates that the total amount of
19 funds necessary to consummate the transaction, including debt to be incurred or to
20 remain outstanding in connection with the merger, is approximately \$22.4 billion.
21 This amount is expected to be provided through a combination of (i) up to
22 \$5.1 billion in new equity financing from the Sponsor Investors,
23 (ii) approximately \$2.8 billion in rollover equity financing from Richard D.
24 Kinder and the other Rollover Investors, (iii) approximately \$7.6 billion in new
25 debt financing and (iv) approximately \$6.9 billion of existing indebtedness of
26 Kinder Morgan expected to remain outstanding in connection with the merger.
27 Prior to the effective time of the merger, Parent may permit additional rollover
28 commitments from other members of senior management, in which case the

1 aggregate equity commitments from the Sponsor Investors described above will
2 decrease by the aggregate value of such new rollover commitments. In addition,
3 each of the Sponsor Investors may syndicate its equity commitment to its
4 affiliated funds, entities and investment vehicles and to co-investors where such
5 Sponsor Investor retains direct or indirect control over voting and disposition.

6 Q. Will the stockholders of Kinder Morgan vote on the merger?

7 A. Yes. A special meeting of stockholders will be set at which they will vote to approve and
8 adopt the merger agreement.

9 Q. And if the merger is approved by the stockholders, when will the merger become
10 effective?

11 A. The merger will become effective upon the filing of a certificate of merger with the
12 Secretary of State of the State of Kansas, or such later date as might be agreed by Parent
13 and Kinder Morgan and specified in the certificate of merger. The certificate of merger,
14 however, cannot be filed until all of the closing conditions stated in the merger agreement
15 have been satisfied or waived, to the extent they legally can be waived, and the closing of
16 the merger has taken place.

17 Q. At this time, and assuming the stockholders of Kinder Morgan approve the merger, when
18 do you anticipate that the merger will become effective?

19 A. We are requesting state regulatory approvals by the end of this year so that we can
20 proceed with the merger in the first quarter of 2007.

21 Q. How does Kinder Morgan propose to effect its internal restructuring?

22 A. The local distribution assets in Colorado, Wyoming and Nebraska (currently held by
23 Kinder Morgan) will be conveyed to a new entity called Source Gas Distribution LLC.
24 Kinder Morgan has formed a holding company called KM Retail Utility Holdco LLC to
25 separately hold its public utility assets and business operations located in the United
26 States, which include Source Gas Distribution LLC.

1 Q. How will the transaction affect the current utility management and operations?

2 A. We expect that there will be no change in current management and operations. Mr.
3 Watson addresses the affects on the utility operations in his testimony and I agree with
4 what he has set forth.
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6 Q. Does that conclude your prepared direct testimony?

7 A. Yes, it does.
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